सत्यमेव जयते

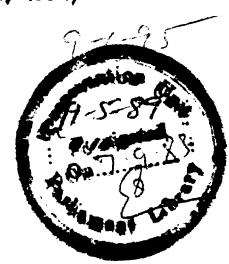
PARLIAMENTARY DEBATES

(Part II—Proceedings other than Questions and Answers)

OFFICIAL REPORT

VOLUME XV, 1951

(30th August, 1951 to 22nd September, 1951)



Fourth Session

of the

PARLIAMENT OF INDIA

1951

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THE
PARLIAMENTARY DEBATES
(Part II—Proceedings other than Questions and Answers)
OFFICIAL REPORT

PARLIAMENT OF INDIA

Saturday, 22nd September, 1951.

The House met at Half Past Nine of the Clock.

[MR. DEPUTY-SPEAKER *in the Chair.*]

QUESTIONS AND ANSWERS

(No Questions: Part I not published)

LEAVE OF ABSENCE FROM THE HOUSE

Mr. Deputy-Speaker: Before the House proceeds with any other business, I would like to inform hon. Members that Shri G. R. Ethirajulu Naidu has requested for leave of absence under article 101(4) of the Constitution on account of illness.

Is it the pleasure of the House to grant him leave?

Leave was granted.

HINDU CODE—*contd.*

Mr. Deputy-Speaker: The House will now take up further consideration of the Bill to amend and codify certain branches of the Hindu Law, as reported by the Select Committee. We were on clause 4 and the amendments to that clause.

श्री ओरांव : कई रोज से हिन्दू कोड बिल पेश हुआ है और इस के द्वारा हम लोगों के अन्दर सामाजिक और धार्मिक परिवर्तन होने जा रहा है। ऐसी हालत में अच्छा हो कि हिन्दी में बोला जाय तो हम भी क्या हो रहा है इस को समझ सकें ।

[**Shri Oraon** (Bihar): For the last many days, the Hindu Code Bill has been before the House. This Bill is going to make social and religious changes. Keeping this in view it would be better if hon. Members speak in Hindi so that people like me may also understand what is being said.]

Mr. Deputy-Speaker: But Pandit Thakur Das Bhargava was on his legs. Therefore, I must call him and give him preference.

Hon. Members: Has he not finished?

Mr. Deputy-Speaker: Has he concluded?

Pandit Thakur Das Bhargava (Punjab): No Sir, I had just begun.

श्री भट्ट : माननीय उपाध्यक्ष जी, श्री ओरांव जी कोई जानकारी चाहते हैं, वह बोलना नहीं चाहते हैं ।

श्री ओरांव : मैं यह कहना चाहता हूं कि जो सज्जन हिन्दी जानते हैं वे हिन्दी में बोलते तो हम लोग भी समझ जाते कि इस बिल के बारे में क्या हो रहा है।

[**Shri Bhatt** (Bombay): Sir, Shri Oraon does not want to speak. He only wants some information.

Shri Oraon: I want to say that those hon. Members who know Hindi should speak in that language so that we may also understand what they say about this Bill.]

पंडित ठाकुर दास भार्गव : माननीय डिप्टी स्पीकर साहब, मेरे एक भाई से अभी इच्छा प्रकट की है कि मैं आप की सेवा

[पंडित ठाकुर दास भार्गव]

में हिन्दी में अपना भाषण दूं। मैं उन की इस इच्छा का आदर करने के लिये हिन्दी में ही बोलना चाहता हूं।

मैं कल हाउस के सामने यह कह रहा था कि हमारे जो रिवाज हैं वह हिन्दुस्तान में बड़े भिन्न भिन्न प्रकार के रिवाज हैं और उन रिवाजों में इस क़दर अन्तर है, एक रिवाज दूसरे रिवाज से इतना भिन्न है, कि जो काम देश के एक हिस्से में अच्छा समझा जाता है वही देश के दूसरे हिस्से में निहायत निकृष्ट समझा जाता है। इस लिये हम को बड़े एहितयात से इस बारे में अमल करना चाहिये। मैं ने कल करेवा फ़ार्म आफ़ मैरिज (form of marriage) की मिसाल हाउस के सामने पेश की थी और कई मेम्बर साहबान उस करेवे के ज़िक्र को सुन कर हंस पड़े थे। अवध में और पंजाब में यह करेवे का रिवाज ज्यादा है। इस में हंसी की बात नहीं है। अगर आप उस ऊंचे आदर्श से देखें जो हिन्दू सोसाइटी में चलते चले आये हैं तो इस ऊंचे आदर्श से यह हो सकता है कि आप में से चन्द भाई इस करेवे के रिवाज को पसन्द न करें, क्योंकि पुराने क़ायदे के मुताबिक़ बड़े भाई की बीवी माता के समान होती है। मुझे मालूम है कि रामायण में जब लक्ष्मण जी को उन की माता ने जाने की इजाज़त दी तो उन की माता ने यह कहा था।

"रामं दशरथं विद्धि माम् विद्धि जनकात्मजाम्
अयोध्यामटवीं विद्धि गच्छ तात, यथासुखम्"

उन्हों ने कहा था कि राम को पिता जी के बराबर मानना और सीता जी को अपनी माता के बराबर मानना और अयोध्या को बिल्कुल एक सुन्सान जंगल समझना और मानना और तुम राम के साथ जावो। लेकिन मैं पूछना चाहता हूं कि जहां इतना ऊंचा आदर्श हमारे सामने था वहां आज कितने लड़के हैं जो बाप की आज्ञा के मुताबिक़ १४ वर्ष के लिये जंगल जाने को तैयार हैं। कितने ऐसे लोग हैं जो अपने बड़े भाई को पिता के बराबर मानते हैं? यह तो आईडियल्स (ideals) हैं। सोसाइटी के अन्दर जो रिवाज हैं, सोसाइटी के अन्दर जो आम बात है, उस के अन्दर आप मानेंगे कि हमारे शास्त्रों में यह लिखा है कि देवर जो होता है वह द्विवर होता है, सेकिंड प्रोसपेक्टिव (second prospective) पति होता है और शास्त्र में ऐसी बहुत सी मिसालें हैं जिनके अनुसार देवर को हक़ दिया गया है कि वह अपनी भाभी के साथ भाई की मौत के बाद शादी कर ले। इस में कोई ताज्जुब की बात नहीं है। बहुत से भाई जो मद्रास से और दूसरे प्रान्तों से आये हैं मुझे उन के रिवाज मालूम हैं। मैं ने बहैसियत एज आफ़ कन्सेन्ट कमेटी (Age of Consent Committee) के मेम्बर के सारे हिन्दुस्तान में टूर किया था और सारे देश में जितने रिवाजात थे उन की छान बीन की थी। इसी लिये मैं अर्ज़ करना चाहता हूं कि ऐसे अलग अलग रिवाजात हमारे देश के अन्दर हैं, मुझे उन को बताने की ज़रूरत नहीं है, क्योंकि किसी भी बिरादरी में कोई रिवाज हो तो उसके पीछे जो लोगों के अन्दरूनी जज़बात हैं, उन को तकलीफ़ नहीं पहुंचाना चाहिये। इस लिये मैं अर्ज़ करना चाहता हूं कि इस में, करेवे के रिवाज में, हंसने की कोई बात नहीं है। दर असल करेवे का रिवाज जो है उस से इतने बेशुमार फ़ायदे हैं कि सैंकड़ों वर्ष से इन कम्युनिटीज़ (communities) में यह रिवाज होता चला आया है और उन्हें बड़ा भारी फ़ायदा इस से हुआ है। मसलन् हम सब

जानते है, कि पिछले ज़माने में और हिन्दुस्तान में आज भी जब किसी लड़की की शादी किसी ख़ानदान में होती है तो दर असल शादी तो उस की होती है उस के खाविन्द से लेकिन वह उस ख़ानदान में एक ऐसा मेम्बर बन कर आती है कि वह उस सारे ख़ानदान की बन जाती है। चुनांचे जो हिस्सा उसे जायदाद में मिलता है वह उस ख़ानदान की जायदाद में मिलता है। इस लिये कोशिश यह है कि उस का हिस्सा और उस की जायदाद उसी ख़ानदान में रहे। और ख़ाविन्द के मरने के बाद उस के बाल बच्चों को ज़िम्मेदारी भी उस ख़ानदान की ज़िम्मेदारी रहे। इसी वास्ते यह करेवे का रिवाज है। इस तरह से वह औरत उस घर में ही रहती है, या तो देवर के साथ, जो छोटा भाई हो या चचा का लड़का अच्छी उम्र का हो तो उस के साथ शादी कर दी जाती है, ताकि उस औरत को और उसके बड़े भाई के जो बाल बच्चे हों, उन को कोई तकलीफ़ न हो और उसी मुहब्बत से, उसी मोहाल में उन का पालन पोषण किया जा सके। इसी वास्ते आपको मालूम है कि हिन्दुस्तान के अन्दर यह आम रिवाज मंजूर किये गये हैं। आप इस मामले को विडो रिमेरिज ऐक्ट १८५६ की दफ़ा (२) की रू से देखिये कि अगर कोई बेवा शादी कर ले तो उस के खाविन्द की जो जायदाद होती है उस में से उस का हक़ खत्म हो जाता है। मैं यह खास तौर से डाक्टर अम्बेडकर की ख़िदमत में अर्ज करूंगा कि मेन्टेनैन्स (maintenance) का जो हक़ औरत को है वह सब राइट्स (rights) और सब रूल्स (rules) जितने उस के हक़ में हैं वह सब के सब रिमेरिज (remarriage) से उस के पहिले खाविन्द की जायदाद के मुताल्लिक़ खत्म हो जाते हैं और उस की साफ़ वजह जो है वह यह है कि वह औरत रिमेरिज से दूसरे खानदान में चली जाती है। लेकिन करेवे से यह रास्ता निकल आता है कि अगर वह अपने देवर के साथ शादी करती है तो पहिले खाविन्द की जायदाद जो उसे मिली हो वह उसी के साथ रहती है। और यह रिवाज पंजाब में खास कर सिक्ख जाटों में बहुत रायज है। यह बेवा जब तक पहिले खाविन्द के घर में रहती है और देवर का कपड़ा ओढ़ लेती है तो उस का ज़मीन पर से हक़ ज़ायल नहीं होता।

The Minister of Law (Dr. Ambedkar): Would this not be more relevant when we deal with the clause on marriage? Now we are dealing in a general way. I have said that whenever each clause comes, to whatever extent it may be necessary that clause may be made subject to custom. I would only suggest to my friend that probably his remarks would be more relevant when we come to that part.

Mr. Deputy-Speaker: I have also been thinking of it. The amendments he has tabled seek that only those portions of the Bill must prevail where they are not inconsistent with custom. Then he wants certain customs to be saved. So far as these customs—which will be saved—are concerned, they may be more specifically referred to when we come to the relevant portion on marriage and divorce. With reference to the general question as to whether this snould operate where there is inconsistency or whether it should generally operate where it deals with the matter, this is a matter which may be dealt with when we come to details.

Dr. Ambedkar: Would the difference be very great? Supposing we say that any custom which is not inconsistent will be safe or we say "subject to any custom to the contrary", I think the effect would be the same.

Mr. Deputy-Speaker: The hon. Member need not go into the customs *in extenso*. A general indication of the custom is enough. We may dwell on the details when the relevant clause comes up.

पंडित ठाकुर दास भार्गव : मैं डाक्टर अम्बेडकर साहब के ऐतराज़ के फोर्स (force) को मानता हूं ।

डा० अम्बेडकर : मैं ऐतराज़ नहीं करता, खाली यह कहता हूं कि उधर रैलेवेंट होगा ।

पंडित ठाकुर दास भार्गव : मैं किसी रिवाज की डिटेल (detail) में नहीं जाऊंगा। मैं जो इस पर बहस करता हूं तो जैसा डिप्टी-स्पीकर साहब ने फ़रमाया मेरे जो चारों अमेंडमेंट्स हैं वह भी एक हद तक एक दूसरे के मुखालिफ़ हैं । मैं ने एक अमेंडमेंट यह दिया है कि कस्टम सब कानूनों के ऊपर और हिन्दू कोड बिल के असूलों पर भी पानी फेर दे और प्रवेल (prevail) करे । मैं ने यह इस लिये दिया है कि आप पर मैं यह ज़ाहिर कर सकूं कि अगर आप इस अमेंडमेंट के असूल को मान लेंगे तो आप फिर कहां जावेंगे । मैं नहीं चाहता कि मेरा अमेंडमेंट जो कस्टम को कानून से ऊंचा करे माना जाये और वह पास हो, वह तो खारिज होना चाहिये । लेकिन मैं यह कहना चाहता हूं कि हमारे कस्टम किस तरह के हैं और इसी लिये मैं ने करेवे की मिसाल दी । मैं डिप्टी स्पीकर साहब की खिदमत में अर्ज़ करूंगा कि मैं इस के अन्दर यह नहीं चाहता कि आप इस रिवाज को बचाइये। जो कस्टम मेरी अक्ल के मुताबिक़ दुरुस्त नहीं हैं मैं उन के रखने के वास्ते हाउस में कोशिश नहीं करूंगा ।

Mr. Deputy-Speaker: Would it not go against the very spirit of the Code? The object of this Code is to gather the varied customs and put them into a single Code. Hitherto, customs have not been codified. Some customs have been upheld by the courts and if we go on making exceptions, the whole law will become nebulous. The purpose of the Code itself will be frustrated. I think the Code seeks to incorporate the customs which have been upheld by courts and a presentable document is placed before the country which can be the basis for further additions, if necessary. But it will go against the very grain of this Bill if all the customs are exempted. Only in exceptional cases, special provisions should be made in regard to customs. I am not ruling the hon. Member out of order. Now that we have accepted the principle that we must codify certain matters, it follows that any custom which is inconsistent with this law must go.

पंडित ठाकुर दास भार्गव : मैं निहायत अदब से अर्ज़ करूंगा कि जनाब वाला ने जो फ़रमाया है मैं उस के एक एक लफ्ज़ की ताईद करता हूं क्योंकि यही सही है और जनाब की खिदमत में मैं जो कुछ अर्ज़ कर रहा हूं उस का भी यही मतलब निकलता है । यह पंजाब के जो कस्टमरी लाज़ (customary laws) हैं उन के अन्दर जो कस्टम्स हैं, इतने वर्षों से उन के ऊपर डिसीजन्स (decisions) होते आये हैं कि जो जस्टिस (justice) ईक्विटी (equity) और गुड कानशेन्स (good conscience) के मुताबिक़ हैं । यह हमारे जो रिवाजात हैं, हमारे जो कस्टम्स हैं इन के ऊपर हज़ारों मुक़द्दमे चल चुके हैं । इस लिये इन को हम को बेसिस मानना चाहिये और इस क़िस्म के जितने कस्टम्स हों उन को मानना चाहिये ।

जनाब ने इरशाद फ़रमाया था कि हम सब कस्टम्स में गये तो एक नैबुलस स्टेट आफ थिंग्ज़ (nebulous state of things) में चले जावेंगे और फिर कोड से कोई फ़ायदा नहीं होगा । मैं इस से ज़रा आगे चलता हूं । मैं यह अर्ज़ करना चाहता हूं कि जहां ऐसे भी कस्टम्स हैं कि जो इस वक्त में ठीक हैं, मसलन् करेवे का सिस्टम है, उन के लिये गुंजायश कुछ अस के लिये होनी चाहिये । जिस तरह से आप ने बम्बई ऐक्ट और मद्रास ऐक्ट में

गुंजायश रखी कि जहां कस्टमरी डिस्साल्यूशन आफ मेरिज (customary dissolution of marriage) का कस्टम होगा वहां वह रहेगा । इन चीज़ों के लिये जहां गुंजायश रख ली है वहां इस तरह के सभी कस्टम्स के लिये या तो गुंजायश होनी चाहिये या सारे ऐसे कस्टम अभी खत्म कर देने चाहियें कोडिफिकेशन का मतलब मैं यह लेता हूं कि जो खराब कस्टम हैं उन को दुरुस्त करें । डाक्टर अम्बेडकर साहब इस से मुत्तफिक नहीं हैं । वह सब को कोडिफाई (codify) करना चाहते हैं । मैं तो ईमानदाराना तरीक़े से अर्ज़ करना चाहता हूं कि जब हम कोडिफाई करें तो अच्छी चीज़ें लें, निकम्मी चीज़ों को हटा दें । कोडिफिकेशन के अगर यह माने कि जो निकम्मे भी कस्टम हैं उन को भी हम कोडिफाई कर दें तो मैं इस के सख्त बरखिलाफ़ हूं. यह हरगिज़ हमारा मंशा नहीं है कि कोडिफिकेशन के ज़रिये बुरे रिवाजों को पक्का कर दें ।

यह हमारी हरगिज़ मंशा नहीं है, इस वास्ते मैं साफ़ तौर पर वह अर्ज़ करना चाहता हूं कि जहां मैं ने अपनी यह तरमीम पेश की है कस्टम्स प्रिवेल होने चाहियें, मैं ने उस के खिलाफ़ यह भी पेश किया है कि जितने यूनिवर्सल (universal) कानून व असूल हैं, उन को पूरी अहमियत दी जाये । यह अच्छी तरह से मालूम किया जाय कि क्या चीज़ ज़रूरी है, वह यूनिवर्सल लाज़ जो दुनिया के अन्दर मौजूद हैं और जो फ़ायदेमन्द और न्यायपूर्वक यूसेजेज़ और कस्टम्स (usages and customs) हैं उन को ज़रूर माना जाय ।

मैं अदब से अर्ज़ करना चाहता हूं कि अगर आप यह चाहते हैं कि हमारे रिवाजों को कोडिफ़ाई किया जाय, तो मेरे ख्याल में सब से बड़ा रिवाज यह है कि आप तलाक़ को न रायज करें, सब से बड़ा कस्टम यह है कि आप तलाक़ न रक्खें । लेकिन हम जान बूझ कर और आंख खोल कर औरत को तलाक़ का हक़ देने जा रहे हैं क्योंकि हमारे विधान के मुताबिक और सेन्स आफ जस्टिस (sense of justice) के मुताबिक़ यह उचित नहीं है कि हम उन को उन की आज़ादी न दें, । यह ठीक है आप उन को यह हक़ दें । लेकिन बाइगामी (bigamy) एक हस्टैबलिश्ड कस्टम (established custom) है, सैकड़ों वर्षों से यह कस्टम प्रचलित है और उस का समाज में कहीं कहीं रिवाज है । मसलन् एक आदमी की बीवी मौजूद होती है और वह करेवा सिस्टम से एक दूसरी औरत ब्याह कर के ले आता है, लेकिन आप का रूल पास हो जाने के बाद और मोनोगमी (monogamy) पास हो जाने के बाद यह नहीं कर सकेगा और वह दूसरी शादी पहली बीवी की मौजूदगी में नहीं कर सकेगा ।

Mr. Deputy-Speaker: The only point is this. In so far as *Karewa* custom is concerned, it allows bigamy in particular circumstances. I think when we come to monogamy we can deal with that. But on general principles, the hon. Member can only say that this Code should be applied to all cases except that he may refer to some cases here and there by way of illustration to show that they may be exempted.

Pandit Thakur Das Bhargava: I have not touched upon any particular custom. I want only to show what is the place of custom in this Code. Only to illustrate this, I mentioned the example.

Mr. Deputy-Speaker: I think the sponsor of the Bill feels that he has looked into all the customs and he has included all customs that, according to him, must have the sanction of law. Other hon. Members may feel that certain other customs prevail and exception must be made for them in the body of the Bill. If that is so, it should be done at the appropriate stage. At

[Mr. Deputy-Speaker]

present we are on the general provision which says that any custom that is unwholesome and therefore inconsistent with this Code will go. Should we not make a provision like that saying that in so far as matters regulated by this Code are concerned, such a custom shall not prevail and shall not have force? What is relevant therefore on this clause is the general nature of the custom and a few illustrations here and there. Even if there be a single custom which has to be abrogated by this Bill, such a clause is necessary. We are now going into the root of the matter. As to whether a custom has been enjoying uniformity, continuity or is of ancient nature—those are matters which certainly can be looked into and if some additions are suggested by hon. Members those can be considered.

पंडित ठाकुर दास भार्गव : यह जो क्लाज़ है जनाब वाला, अगर सारा कोड होता तो इस क्लाज़ की क़तई ज़रूरत थी, अभी आप एक चैप्टर (chapter) पास कर रहे हैं जिस में हर जगह कह रहे हैं कि कस्टम का फलां जगह दखल होगा, इस लिये मैं ने मिसाल देकर बतलाया कि ऐसा कस्टम बहुत वर्षों से रायज है ।

Mr. Deputy-Speaker: Even if there is a single unwholesome custom relating to marriage and divorce, this clause is necessary. For instance, the sponsor of the Bill feels that whatever might be the exceptions, a maternal uncle marrying his niece that is, a brother marrying his sister's daughter should not be exempted.

Dr. Ambedkar: We shall deal with that matter at the relevant stage.

Mr. Deputy-Speaker: Let us assume that the Law Minister feels that such a custom ought not to have the force of law, then we should have a general clause like this here. There are customs even with respect to marriage and divorce which have to be provided against, if they are unwholesome or opposed to public morality, or public interest or public policy. I do not see how you can get out of a general clause like this in some shape or form.

पंडित ठाकुर दास भार्गव : जनाब वाला, मुलाहिज़ा फ़रमायेंगे तो देखेंगे कि मैं ने क्लाज़ ४ के ओमिशन (omission) का अमेंडमेंट नहीं दिया है । लेकिन मैं ने उस का ज़िक्र और मिसाल इस गर्ज़ से दी है कि इस जनरल क्लाज़ में हम कस्टम को क्या जगह देंगे । और मैं मानता हूं कि जैसा मेन साहब (Mr. Mayne) ने कहा है : कस्टम इज़ दी फर्स्ट रूल आफ डिसीज़न (Custom is the first rule of decision).

Mr. Deputy-Speaker: The arguments are not confined to the restrictions that have to be made so far as clause 4 is concerned.

पंडित ठाकुर दास भार्गव : मैं अदब से अर्ज़ करना चाहता हूं कि दफ़ा तीन और चार, जहां कस्टम की तारीफ़ की गई है, दोनों ओवरलैप (overlap) करती हैं । कल मैं ने दफ़ा तीन पर बहस की, तो डाक्टर अम्बेडकर ने चार का जैवाब दे दिया, तीन और चार ओवरलैप करती हैं लये उन का ज़िक्र आ जाता है और ज़िम्न आ जाता है । जैसा कि सूत्रों में और स्मृतियोंमें लिखा है :

वेदा विभिन्नाः स्मृतयो विभिन्नाः नैको मुनिर्यस्य वचः प्रमाणं,
धर्मस्य तत्वं निहितं गुहायां, महाजनो येन गतः स पन्था ।

मैं अदब से अर्ज़ करूंगा कि कस्टम एक खास चीज़ और अपनी खास जगह रखता है और कस्टम के बग़ैर परसनल ला (personal law) कोई चीज़ नहीं है, दफ़ा पांच Punjab Laws Act 1872 में यही पायेंगे और कोर्टस की बहुत सी रूलिंग्स (rulings) भी हुई हैं जिन में कहा गया है कि परसनल ला में कस्टम को दखल है । मेरे ख्याल में परसनल ला को बनाते समय हम इन कस्टम्स को ऐज्यूम (assume) कर लेंगे । जनाब वाला, पंजाब का मैं ज़िक्र कर रहा हूं, सौ वर्ष की तारीख़ में वहां यह हुआ कि अग्रीक्लचरल कम्यूनीटीज़ (agricultural communities) का कोई मुक़द्दमा आया, उन्हों ने

ऐज्यूम कर लिया कि वह अग्रीक्लचरल कस्टम से गवर्न (govern) होगा । अगर शहर के रहने वालों का गया तो ऐज्यूम कर लिया कि परसनल ला माना जावेगा । दर असल पंजाब की चीफ़ कोर्ट के फ़ैसलों के मुताबिक़ (107 of 1887, 100 of 1906) व बहुत से फैसलों से अब यह कानून सा बन गया है कि कोई जनरल रिवाज नहीं है और सिवाए जब कि मुक़द्दमा ज़राअत पेशावर कौमों का न हो और उन की सूरत में भी रिवाज का साबित करना रिवाज कहने वाले के ज़िम्मे डाला गया है—मैं अर्ज़ करता हूं कि इस नुक़्ते ख्याल से मैं इस हिन्दू कोड बिल को देखता हूं, हम को किसी के कस्टम में बेजा तौर पर दखल नहीं देना चाहिये । कल मैं ने जनाब वाला की खिदमत में अर्ज़ किया कि डाक्टर अम्बेडकर साहब मद्रास ऐक्ट, बम्बई ऐक्ट में डाइवोर्स की जो कस्टमरी बेसिस है, उस को मानने को तैयार हो रहे हैं । मैं इस के बरखिलाफ़ अपनी आवाज़ उठाना चाहता हूं । उस बेसिस के ऊपर हमारा सारा डाइवोर्स ला (Divorce Law) खराब न करें, यह डाइवोर्स ला पहली दफ़ा देश में बन रहा है । आप इस के ज़रिये से हिन्दुस्तानियों के अपर क्लासेज़ (upper classes) की सोशल एकोनामी (social economy) में एक बड़ी भारी दस्तअंदाज़ी कर रहे हैं और इस के मैं हक में हूं । मैं डाइवोर्स के हक़ में हूं । मुझे यह कहने में किसी तरह का ताम्मुल नहीं है, मैं चाहता हूं कि आप सारे देश का एक डाइवोर्स ला रक्खें, और आप देश को जो युनिफ़ाई (unify) करना चाहते हैं, मैं उस में आप के साथ हूं । मैं जानता हूं पंजाब में जहां का मैं रहने वाला हूं और देश के बहुत से दूसरे हिस्सों से भी वाकिफ़ हूं, जहां पर डाइवोर्स इतनी आसानी से होता है और यह कहावत मशहूर है कि मियां बीवी राज़ी, तो क्या करेगा काज़ी । मैं नहीं चाहता महज़ कहने से डाइवोर्स हो जाय, ऐसा करना अव्वल जेंद की बेइन्साफ़ी होगी । एक कस्टम है कि जितना खर्चा पहले हुआ है जो खाविन्द ने किया है, और्रत उस खर्चे को दे दे और फिर वह औरत डाइवोर्स कर ले । मैं इस कस्टम का सख्त मुखालिफ़ हूं । यह कस्टम हमारी मोरेलिटी (morality) को गड्ढे में फैंकना चाहता है, और मैं इस वास्ते जनाब का वक्त ले रहा हूं, डाक्टर साहब मेरी अर्ज़ नहीं सुन रहे हैं, और अपने और काम में मशगूल हैं, डाइवोर्स और मैरिज ला आल इंडिया बेसिस (All-India basis) पर ज़रूर बनाइये और डाइवोर्स के ग्राउंड्स (grounds) एक से रखिये । इन ग्राउंड्स के बारे में किसी कस्टम को न मानिये वरना सख्त मुसीबत का मुकाबला होगा ।

बम्बई ऐक्ट और मद्रास ऐक्ट के इन प्राविजन्स को मैं काउन्टेनैन्स (countenance) नहीं करना चाहता । मैं आज अपनी आवाज़ इस के खिलाफ़ उठा रहा हूं तो इस लिये नहीं कि बम्बई और मद्रास ऐक्ट्स का दुश्मन हूं । जहां तक बाइगेमी (bigamy) का ताल्लुक है मैं उस का उतना ही मुखालिफ़ हूं जितना वह लोग । इस लिये मैं अर्ज़ करूंगा कि मैं ने जो दो या तीन ऐमेंडमेंट्स दिये हैं उन सब का मतलब एक ही है और वह यह कि जो हमारे शादी वगैरह के ऐक्ट में अच्छे प्रिंसिपल्स माने गये हैं मैं उन को छोड़ने को तैयार नहीं हूं । हर एक कस्टम न माना जाना चाहिये । डाक्टर अम्बेडकर ने कहा कि कस्टमरी बेसिस मानना चाहिये । लेकिन अगर यह

[पंडित ठाकुर दास भार्गव]

माना गया तो मैं अदब के साथ अर्ज करना चाहता हूं कि जैसा आप ने फ़रमाया है हिन्दू कोड का सारे का सारा मक़सद खत्म हो जायेगा । इस वास्ते हम चाहते हैं कि एक ही बेसिस हो डाइवोर्स होने का अगर उस के कसूर से डाइवोर्स हो तो खाविन्द की जिम्मेदारी हो कि वह औरत को दूसरी शादी तक खर्च वगैरह देता रहे । इस बिल में जनाब मुलाहज़ा फ़रमायेंगे कि गोकि इस के वास्ते कोई कस्टम वगैरह नहीं हैं, लेकिन इस बेसिस पर कि यह मुनासिब है हम बहुत से रूल्स बना रहे हैं जो दूसरे मुल्कों के रूल्स के मुताबिक हैं । मैं कहता हूं कि हमारी उन मुल्कों के रूल्स से कोई लड़ाई नहीं है । लेकिन मैं हर एक कस्टम के रखने के मुखालिफ़ हूं क्योंकि उस में अनरीज़नेबुल कस्टम्स (unreasonable customs) भी हैं । जहां आप ने कस्टम की तारीफ़ लिखी है वहां में जस्टिस, ईक्विटी ऐंड गुड कान्शिएन्स इन तीन अल्फाज़ को नहीं पाता हूं । ऐसे कस्टम्स को जो बिल्कुल इम्मोरल (immoral) थे उन को हमारे हाई कोर्टों ने इस वास्ते हटा दिया कि वह जस्ट (just) नहीं थे । अगर कोई ऐसे कस्टम हैं जिन में डाइवोर्स ज़ोर दे कर हो जाता है और इस के बारे में यक़ीन हो जाये तो ऐसे कस्टम को हाई कोर्टस ने इम्मोरल करार दिया है हालांकि वह भी सारे कस्टम्स के साथ दर्ज थे । लेकिन यही चीज़ें जो दर असल न्याय व मोरेलिटी पर निर्भर नहीं हैं इस क्लाज़ ४ के बेसिस पर बैक डोर (back door) से आना चाहती हैं । ऐसे कस्टम्स को फिर दाखिल करने की कोशिश की जा रही है जो कि हमारे कोड की जान निकाल देंगे और जो हमें हर्गिज़ कबूल नहीं होंगे । हमें इन चीज़ों को इस लिये बन्द कर देना चाहिये । हां, जो सही उसूल हैं, सही कस्टम हैं, मसलन जैसे साउथ इंडिया का कस्टम जनाब वाला ने बताया, वह तो बहुत डीप रूटेड कस्टम (deep-rooted custom) हैं, उस में मुझे कोई एतराज़ नहीं है । जैसे अलिय-सन्थानम ऐक्ट है, उस को आपने २४ ए बना दिया है, मुझे उस में कोई एतराज़ नहीं है । लेकिन इस तरह के कस्टम जिन से हम को नुकसान होता हो उन को जगह न दी जाय । हिन्दू ला (Hindu law) में दर्ज है कि कस्टम ऐसी चीज़ है जिस पर हमें चलना चाहिये । मैं निहायत अदब से अर्ज करना चाहता हूं कि कस्टम तो आर्केइक (archaic) सोसायटी के लिये होते हैं, लेकिन जो ऐडवान्स्ड (advanced) सोसायटी है, जो दुनिया के साथ चलती है उस के लिये कुछ यूनिवर्सल प्रिंसिपल्स होते हैं जिन को लेजिस्लेचर ऐक्ट बना देती है और उन पर उस को चलना चाहिये । इस लिये मेरा कहना है कि बेजा तौर पर कस्टम को न रखा जाय । यह मेरा ऐमेंडमेंट है । जो मेरा ऐमेंडमेंट ४४६ नम्बर पर है उसे इस लिये मैं ने दिया है कि डाक्टर अम्बेडकर और यह हाउस देख ले कि हम किस खतरनाक जगह पर पहुंच जायेंगे अगर उस दफ़ा को रख दिया गया । वरना मैं ने तो वह ऐमेंडमेंट सिर्फ बहस के लिये रख दिया है कुबूल करने के लिये नहीं । जो मेरे बाकी ऐमेंडमेंट हैं वह मैं पेश कर चुका हूं ।

मैं इन हालात के अन्दर डा० अम्बेडकर और हाउस से बड़े ज़ोर से अर्ज करूंगा कि हम चाहते हैं कि इन्साफ हो, किसी को बेजा तकलीफ न हो, इस लिये इन तीनों अल्फाज़ (justice, equity and good

conscience) के बेसिस पर आज आप जो मुनासिब समझें करें जितना चाहें दरवाज़ा खोल दें। जो नया कानून बनायें तो वह ऐसा बनायें जिस में इन्साफ हो । उस में कस्टम की वह जगह हो जो सही हो । लेकिन निकम्मी चीज़ों, जो असली उसूलों के बरखिलाफ़ हों, उन को काउन्टेनेन्स न करें। हम कस्टम को ठीक जगह देना चाहते हैं । हम लोग कस्टम की इज्जत करना चाहते हैं जहां तक कस्टम किसी उसूलों पर मबनी हैं । लेकिन महज़ चूंकि कस्टम हैं, और इस तरह के कस्टम हैं जो इम्मारैलिटी की तरफ ले जाने वाले हैं, हम उन को रखने के विरुद्ध हैं । अगर कोई कस्टम आप बना दें, और वह इम्मारिलिटी की तरफ ले जाता है तो मैं उस के खिलाफ हूं क्यों कि हिन्दू शास्त्र और हमारे उसूलों के खिलाफ़ है । मैं मानता हूं कि डाइवोर्स की ऐप्लीकेशन पर हम को कुछ इख्तलाफ है । लेकिन मैं डाइवोर्स का हामी हूं क्यों कि मैं औरतों के लिये इन्साफ चाहता हूं । आज कल सख्त बेइन्साफी भी होती है, हमारे तुलसीदासजी ने कह दिया था सीता जी के मुख दे—

मितं ददाति हि पिता मितं भ्राता मित सुतः
अमितस्य तुदातारं भर्तारं का न पूजयेत्

जाहिर है औरत बेचारी एकोनिमिकली ताबेदार है और इस लिये खाविन्द की पूजा करती है—यह सोसाइटी के लिये अच्छा नहीं है और न इन्साफ़ के मुताबिक है । अच्छा होता कि ऐसा तुलसीदासजी न कहते । अब इस ज़माने में हम कितनी ही इज्जत करें रामचन्द्रजी की या तुलसीदासजी की लेकिन मैं इस के लिये तैयार नहीं हूं कि औरतों को बन्धन में रखा जाय । यह जो डाइवोर्स की चीज़ है वह मरज़ी पर और ईक्वैलिटी और जस्टिस पर मबनी है । मैं इस से आंख नहीं बन्द कर सकता कि औरतों के साथ कितनी बेइन्साफी होती है । रोज़मर्रा हम देखते हैं कि नौजवान लोग औरतों को छोड़ देते हैं । कहां जायें वह बहनें इस का हमें जवाब दें । मेरी राय यह है कि यह जो डाइवोर्स है यह ठीक चीज है । लोग सती का हवाला देते हैं । लेकिन कोई मर्द भी आज तक सता हुआ ? मैं अर्ज करना चाहता हूं कि दर असल यह क़ानून पुराने ज़माने में था, सारी दुनिया में था कि औरतों को कोई हक़ूक़ न दिये जायें । सन् १८८३ में इंग्लैंड में मैरिड वोमैन प्रापर्टी ऐक्ट (Married Women Property Act) बना ।

श्री टी० हेन० सिंह : यह सता के क्या माने हैं ?

पंडित ठाकुर दास भार्गव । आप माने भी नहीं समझते । सारी औरतें सती के माने समझती हैं, मर्द कोई सता के माने नहीं समझता ।

मैं यह अर्ज़ करना चाहता हूं कि जितने प्राविजन्स हैं उन को हम कस्टम के बेसिस पर, ख़राब कस्टम के बेसिस पर न बनायें, । हमें हिम्मत से काम लेना चाहिये कि हम कस्टम को अपने आप ऐब्रोगेट (abrogate) करें, पुरानी प्रथायें पुरानी हो चली हैं । आप तो ऐसा कानून बनाइये जो कि जस्टिस और बराबरी पर मबनी हो ।

(*English translation of the above speech*)

Pandit Thakur Das Bhargava: Sir, an hon. Member has expressed the desire that I should speak in Hindi. In deference to that I wish to express myself through the medium of that language.

As I was submitting yesterday before the House, our customs are of very heterogeneous character. They are so different from one another that a custom considered to be good in one part of the country may be thought of as a very reprehensible one in another. So

[Pandit Thakur Das Bhargava]

we should proceed about this Bill very cautiously. Yesterday I mentioned the *Kareva* form of marriage at which some hon. Members had laughed. This custom is prevalent to a great extent in Punjab and Oudh and it is not a matter of laughing. If you judge it from the point of view of high ideals of Hindu society, it is possible that some of the hon. Members may not like the *Kareva* form of marriage because according to the ancient standards the wife of the elder brother is to be treated as mother. According to Ramayana when Lakshmana's mother gave her consent to his going with Rama in his exile, she said:

"Ramam Dasharatham viddhi, mam viddhi Jnakatmajam; Ayodhyamatvim viddhi, gachhtat yathasukham."

She asked Lakshmana to look upon Rama as his father and Sita as herself i.e., like his mother, and think that the jungle was Ayodhya. Such was the high ideal of our society. How many young men are prepared to go in exile at the orders of their fathers? How many men respect an elder brother like a father? Such behaviour is ideal. As far as the customs prevalent in society are concerned, even our Shastras have ordained that the younger brother of the husband is *Dwivar* the second, prospective husband. In many cases the Shastras have permitted men to marry the wives of their elder brothers, after their (brothers) death. There is nothing surprising in that. I am conversant with the customs prevalent in Madras and other States. I toured the whole of India in the capacity of a member of the Age of Consent Committee and enquired into the various customs. That is why I say that we have a number of customs of different character and I need not dwell over their intricacies. One should not inquire the feelings of a sect, the feelings which form the basis of a particular custom. I want to submit that there is no good reason to laugh at this *Kareva* system of marriage. In fact, many advantages accrue from this system and those communities that have followed this custom for many centuries have benefited from it to a great extent. For example, in old days and even now in India, when a girl is married in a certain family, she becomes a member of that family, though she is married to one individual. Whatever share of property she gets becomes a part and parcel of that family's property. An effort is made to retain the property and her share in the family, and after her husband's death the responsibility of bringing up her children devolves on the family as a whole. This is the basis of the *Kareva* system. By following this, she by getting married to her husband's younger brother or his cousin continues to be a member of the family even after her husband's death. In this way her children by her first husband are brought up with the same love as before and are not inconvenienced in any way. The hon. Members are aware that such popular customs have been recognised in India. According to Section 2 of the Widow Remarriage Act, 1856, if a widow marries again she loses all her rights in her husband's property. I would invite the attention, specially of hon. Dr. Ambedkar, to the fact that after remarriage a widow loses all her rights pertaining to maintenance or to her share in her former husband's property. The obvious reason for this is that after remarriage, a widow becomes a member of another family. But by following *Kareva* system i.e. marrying her husband's brother after his death, she retains her share in her former husband's property. This custom is prevalent to a great extent in Jat Sikh communities in the Punjab. When the widow continues to be a member of her husband's family by marrying his younger brother after his death, she does not lose her right over land.

The Minister of Law (Dr. Ambedkar): Would this not be more relevant when we deal with the clause on marriage? Now we are dealing in a general way. I have said that whenever each clause comes, to whatever extent it may be necessary that clause may be made subject to custom. I would only suggest to my friend that probably his remarks would be more relevant when we come to that part.

Mr. Deputy-Speaker: I have also been thinking of it. The amendments he has tabled seek that only those portions of the Bill must prevail where they are not inconsistent with custom. Then he wants certain customs to be saved. So far as these customs —which will be saved—are concerned, they may be more specifically referred to when we come to the relevant portion on marriage and divorce. With reference to the general question as to whether this should operate where there is inconsistency or whether it should generally operate where it deals with the matter, this is a matter which may be dealt with when we come to details.

Dr. Ambedkar: Would the difference be very great? Supposing we say that any custom which is not inconsistent will be safe or we say "subject to any custom to the contrary", I think the effect would be the same.

Mr. Deputy-Speaker: The hon. Member need not go into the customs *in extenso*. A general indication of the custom is enough. We may dwell on the details when the relevant clause comes up.

Pandit Thakur Das Bhargava: I realize the force of hon. Dr. Ambedkar's objection.

Dr. Ambedkar: I do not object. All I say is that it will be more relevant in the other context.

Pandit Thakur Das Bhargava: I will not dwell upon the details of any custom. As the hon. Deputy Speaker said all the four amendments moved by me contradict one another. One of them is that custom should over-ride all laws and even prevail upon the Hindu Code Bill. I gave an example of our customs in order to impress upon this House that if we agree to the principle underlying this amendment, we lose our stand. I do not want that my amendment, saying that custom should override laws, be passed. It should be eliminated. I mentioned *Kareva* system in order to bring out the nature of our customs. Sir, I submit that I do not want that the House should try to keep this custom intact. I shall not press the House for the saving of those customs which I do not consider to be proper.

Mr. Deputy Speaker: Would it not go against the very spirit of the Code? The object of this Code is to gather the varied customs and put them into a single Code. Hitherto, customs have not been codified. Some customs have been upheld by the courts and if we go on making exceptions, the whole law will become nebulous. The purpose of the Code itself will be frustrated. I think the Code seeks to incorporate the customs which have been upheld by courts and a presentable document is placed before the country which can be the basis for further additions, if necessary. But it will go against the very grain of this Bill if all the customs are exempted. Only in exceptional cases, special provisions should be made in regard to customs. I am not ruling the hon. Member out of order. Now that we have accepted the principle that we must codify certain matters, it follows that any custom which is inconsistent with this law must go.

Pandit Thakur Das Bhargava: With all respect I beg to submit that I support each and every word of what the hon. Deputy Speaker has said, because it is right and it tallies with what I mean by my remarks. For many a year, decisions have been made on the customary laws and customs of the Punjab, decisions which are in conformity with justice, equity and good conscience. Thousands of suits have been fought on the issue of our customs. So we should take them as a basis and follow such customs.

Sir, you remarked that if we were to go on making exceptions in the case of every custom we would enter a nebulous state of things and the Code would become useless. I go a step further and submit that we should make exceptions in the case of those prevalent customs only which are considered to be right, such as the *Kareva* system which should be allowed to remain in operation for some time. In Madras and Bombay Acts there is a provision that customary dissolution of marriage would remain operative wherever it is prevalent. Where such customs are provided for, all customs should be either allowed to remain operative or be done away with. I take codification to be an attempt at improving bad customs. The hon. Dr. Ambedkar does not agree with me. He wants to codify all customs. I appeal with all sincerity that while codifying we should retain only good things and leave out the bad ones. I am opposed to that kind of codification which would include even bad customs. It is not our intention to perpetuate bad customs through codification. I want to make it clear from my amendment, that customs should prevail. I have also proposed that universal laws and principles should be given due importance, a scrutiny should be made with the purpose of judging as to what is needed and all advantageous and just universal laws, usages and customs should be retained.

If we want to codify our usages and customs, I would like to point out that the most important of our customs is that we should not allow divorce. But we are going to give our women the liberty of divorce, because the Constitution and the sense of justice do not allow that women should lack this liberty. Go ahead and give them this right but bigamy is an established custom. It has been in vogue for many centuries and it is prevalent in some sections of our society. After the passage of this Bill and the enforcement of monogamy a person would not be able to marry another woman by the *Kareva* system as long as his first wife is alive.

Mr. Deputy-Speaker: The only point is this. In so far as the *Kareva* custom is concerned, it allows bigamy in particular circumstances. I think when we come to monogamy we can deal with that. But on general principles, the hon. Member can only say that this Code should be applied to all cases except that he may refer to some cases here and there by way of illustration to show that they may be exempted.

Pandit Thakur Das Bhargava: I have not touched upon any particular custom. I want only to show what is the place of custom in this Code. Only to illustrate this, I mentioned the example.

Mr. Deputy-Speaker: I think the sponsor of the Bill feels that he has looked into all the customs and he has included all customs that, according to him, must have the sanction of law. Other hon. Members may feel that certain other customs prevail and exception must be made for them in the body of the Bill. If that is so, it should be done at the appropriate stage. At present we are on the general provision which says that any custom that is unwholesome and therefore inconsistent with this Code will go. Should we not make a provision like that saying that in so far as matters regulated by this Code are concerned, such a custom shall not prevail and shall not have force? What is relevant therefore on this clause is the general nature of the custom and a few illustrations here and there. Even if there be a single custom which has to be abrogated by this Bill, such a clause is necessary. We are now going into the root of the matter. As to whether a custom has been enjoying uniformity, continuity or is of ancient nature—those are matters which certainly can be looked into and if some additions are suggested by hon. Members those can be considered.

Pandit Thakur Das Bhargava: Had we been discussing the whole of the Code this clause would have been absolutely necessary. But we are going to pass only a chapter in which at every step it is provided that custom will prevail in such and such case. That is why I mentioned an example to show that such a custom has been prevailing for many centuries.

Mr. Deputy-Speaker: Even if there is a single unwholesome custom relating to marriage and divorce, this clause is necessary. For instance, the sponsor of the Bill feels that whatever might be the exceptions, a maternal uncle marrying his niece, that is, a brother marrying his sister's daughter should not be exempted.

Dr. Ambedkar: We shall deal with that matter at the relevant stage.

Mr. Deputy-Speaker: Let us assume that the Law Minister feels that such a custom ought not to have the force of law, then we should have a general clause like this here. There are customs even with respect to marriage and divorce which have to be provided against, if they are unwholesome or opposed to public morality, or public interest or public policy. I do not see how you can get out of a general clause like this in some shape or form.

Pandit Thakur Das Bhargava: Sir, if you look into the list you will find that I have not given notice of any amendment with regard to the omission of Clause 4. But I have mentioned it and have given an example in order to know as to what place would we assign to custom in this general clause. I agree with Mr. Mayne when he says that custom is the first rule of decision.

Mr. Deputy-Speaker: The arguments are not confined to the restrictions that have to be made so far as clause 4 is concerned.

Pandit Thakur Das Bhargava: I beg to submit with due deference that clauses 3 and 4, where custom is defined, overlap each other. Yesterday, while I was discussing clause 3, Dr. Ambedkar quoted clause 4 in reply. Clauses 3 and 4 are overlapping and the mention of one leads to the mention of the other on account of similarity of context.

As *Sutras* and *Smritis* say

"Vedah vibhinnah smrityo vibhinnah naiko muniryasya vacha pramanam, Dharmasya tatvam nihitam guhayam mahajano yena gatah sa pantha."

[*Sruti* says something and *Smriti* another. There is no sage whose word can be taken as final. The secret of Dharma (Duty) is very deep. Follow the path traversed by the great.]

I submit that custom has a special place and personal law has no meaning without custom, as is evident from clause 5 of the Punjab Laws Act, 1872. There are many rulings to the effect that custom has a place in personal law. I think while making personal laws we should assume custom to be there. Sir, in the Punjab, in

the last one hundred years, all suits pertaining to agricultural communities have been assumed to be governed by agricultural customs. In a suit between urban parties, it is assumed that it would be governed by personal law. In fact, according to decisions of the Punjab Chief Court (107 of 1887, 100 of 1906 and several others), it has become a sort of law that there is no general custom except where the parties to a suit belong to the agriculturist communities and even in that case the onus of proof of a certain custom falls on the person who alleges it. Viewing the Hindu Code from this point, I am of opinion that there should be no undue interference in any custom. Sir, yesterday I submitted that hon. Dr. Ambedkar was preparing to adopt the customary basis of divorce as provided in Madras and Bombay Acts. I want to oppose this move. You should not spoil our divorce law by adopting that basis as it is the first time that we are making a divorce law. You are interfering in the social economy of upper class Indians. I am in favour of the divorce law. I have no hesitation in saying that we should have a single divorce law for the whole of the country. I am with you in your efforts for the unification of the country. I know that in Punjab, to which I belong, and other parts of the country, about which I know something, divorce is so easy that there is a saying—"When the parties agree, they need no decree." I do not want that divorce may be had just for the asking; that will be highly unjust. There is a custom according to which the woman pays up the amount spent by her husband and gets a divorce. I am entirely against this custom, because this seeks to destroy our morality. I am taking up your time to voice my opinion, hon. Dr. Ambedkar is not listening to me and is busy with his work. You should make a divorce and marriage law on an all-India basis, and make a provision for some common and uniform grounds of divorce. Do not allow any custom to interfere in the matter of grounds of divorce or we would be in for a calamity.

I would not countenance the provisions of the Bombay and Madras Acts. I am raising my voice against them not because I am an opponent of the Bombay and Madras Acts for so far as bigamy is concerned, I am as much against it as they are. The amendments of which I have given notice have only one purpose in view, that is, I am not ready to give go-by to the good principles that are contained in our laws relating to marriages. Dr. Ambedkar asked for acceptance of customary basis but every prevailing custom should not be accepted because if that were done, as has been done in this Bill, the whole purpose of the Hindu Code Bill would go to pieces. I want that there should only be one basis for divorce. If the responsibility lies with the husband, he should be required to provide for her expenses till the time of her remarriage. You will find from the Bill that although there is no customary basis for them yet it has been found pertinent to make many rules that are in accordance with the rules prevailing in foreign countries. We have no quarrel with the rules of other countries. But I am against inclusion of every custom for there are unreasonable customs also. While customary basis has been so much commended, I find three words—justice, equity and good conscience—absent. The customs that were immoral have been declared void by our High Courts for they were not just. If there are customs under the refuge of which a divorce is effected under pressure and if it is so proved, the High Courts would declare it as immoral although these customs exist together with others. But these very things that are not in fact based on justice and morality want to come through the back-door under clause 4. Effort is being made for admittance of customs that would take out the very life of the Hindu Code. We are in no case going to accept them. We must put an end to these things. Of course, I have no objection for good and useful customs and those that may be very deep-rooted as, for example, the South Indian custom which you just referred. I have thus no objection to Aliyasanthanam Act which has been incorporated in 24(a). But the customs that have harmful effects should be given no place. The Hindu Law says that customs should be followed. In fact, customs are for archaic society; but for the advanced society, that keeps pace with the progress of the world, there are some universal principles which the Legislature embodies in the form of Acts and they should be our basis. This is why I emphasize that customs should not be brought in unnecessarily. That is what my amendment seeks to do. The purpose of my amendment No. 446 is to show at what dangerous spot would we reach if that clause were adopted. Otherwise, I have given notice of that amendment merely for discussion and not for acceptance. The rest of my amendments I have already placed.

Under these circumstances I would emphatically request Dr. Ambedkar and the House that justice should be done and nobody should be put to

[Pandit Thakur Das Bhargava]

unnecessary trouble. The hon. Minister may do whatever he likes on the basis of justice, equity and good conscience—he may leave open as much field as he chooses on that basis. But whatever new legislation is enacted, it should be just. Of course, customs should have their proper place there; but bad customs going against the fundamental principles should not be countenanced. We want to give customs their due place. We want to respect them so far as they are based on principles. But we are against those customs that lead us to immorality because such a custom is antagonistic to the Hindu *Shastras* and to our principles. There are, of course, differences on the application of divorce provision but I for one support it for I want justice for women who are meted out gross injustice these days. Poet Tulsidas had said through the mouth of Sitaji:

Mitam dadati hi pita mitam bhrata mitam sutah,

Amitasya tu dataram Bhartaram ka na pujyet.

It means that the poor woman is economically dependent upon the husband and for that reason she worships him. This is, however, not in the interest of the society and is not in accordance with the principles of justice. Tulsidasji should better not have said that. Whatever respect we may show towards Shri Ram Chandraji, or Shri Tulsidasji, I am not prepared to keep the women in bondage any longer. This principle of divorce is based upon one's desire and upon the sense of equality and justice. I cannot close my eyes to the injustice that is being done to women. It is a daily occurrence now that youngmen leave their wives. I would ask them where are these sisters to go? So I believe that divorce is a right provision. People refer to *Satis*. But has a man ever been a *Sata*? Indeed, the principle of depriving the women of their rights prevailed in a gone-by age all over the world. The Married Women's Property Act was passed in England in 1883.

Shri T. N. Singh (Uttar Pradesh): What is meant by *Sata*?

Pandit Thakur Das Bhargava: Do you not understand even the meaning of *Sata*? All women know what is *Sati* but no man knows what *Sats* is.

So my submission is that we should not make provisions on the basis of customs—bad customs surely. We should, on the other hand, take courage to abrogate customs—those old customs that have now become out-of-date. The Government should make legislation that should be based upon justice and equality.

श्री भट्ट : माननीय उपाध्यक्ष महोदय, मेरी ग़लती से मेरा एक संशोधन पेश करने से रह गया था, अगर आप आज्ञा दें तो मैं पेश कर दूं ।

[**Shri Bhatt:** Sir, an amendment of mine was left out due to my mistake. If you permit, I may move it now.]

Mr. Deputy-Speaker: Is it already in the list? What is the number?

श्री भट्ट : लिस्ट नं० ५ में नं० २८८ ।

[**Shri Bhatt:** No. 288 in List No. 5.]

Mr. Deputy-Speaker: Why was this not moved yesterday?

श्री भट्ट : मैं हाज़िर नहीं था इस लिये यह ग़लती हो गई । जब भाषण शुरू हो चुका था तब मैं अन्दर आया था ।

[**Shri Bhatt:** I was not present at the right time. When I entered the House, the speech had begun.]

Mr. Deputy-Speaker: He may move it.

Shri Bhatt: I beg to move:

In the amendment proposed by the hon. Dr. Ambedkar, in the proposed new clause 4,—

(i) in part (a), after "dealt with in this Code" insert "after ten years from the commencement of this Code"; and

(ii) after part (b) add the *Explanation*:

"*Explanation.*—Notwithstanding anything contained in sub-section (a), for a period of ten years from the commencement of this Code, any text, rule or any custom or usage in force, shall have effect.

बाबू रामनरायण सिंह : सभापति महोदय, आज बहुत सवेरे ही आप ने मुझे इस भयानक विषय पर बोलने का अवसर दे दिया इस के लिये मैं आप को बहुत बहुत धन्यवाद देता हूं । कल और परसों मैं कितनी बार खड़ा हुआ । यह विषय गम्भीर तो है ही, पर मुझे बोलने का अवसर नहीं मिला । इस विषय में मैं आप से एक निवेदन करे देता हूं कि इस में कोई शक नहीं कि आप अपने स्थान पर बैठ कर बिल्कुल न्याय करते हैं, बिल्कुल उचित कार्य करते हैं। इस में किसी को शक नहीं करना चाहिये . . . . .

श्री श्यामनंदन सहाय : और न है ।

बाबू रामनारायण सिंह : और न है । लेकिन मैं आप से इतना ही निवेदन किये देता हूं कि आप को तो सचाई के साथ काम करना है कल आप ने अपने बयान में कहा था कि कुछ ऐसी भावना चल रही है, जो आप के प्रतिकूल है और उस भावना को पैदा न होने देने की आप की अभिलाषा होती है जिस से लोग समझें कि ठीक ठीक काम हो रहा है । तो इस जगह मैं एक बात कहूंगा, सभापति जी, कि यह तो ठीक है कि सचाई के साथ काम करना चाहिये । लेकिन अगर कोई व्यक्ति इस परेशानी में रहता है कि लोग मुझ को हर विषय में और हर जगह सच समझें तो इस परेशानी में उस से गलती हो सकती है इस वास्ते मैं आप से निवेदन किये देता हूं कि आप जो सचाई के साथ काम कर रहे हैं सो करते रहें लेकिन इस की परेशानी आप को कभी नहीं होनी चाहिये कि लोग आप को गलत रास्ते पर तो नहीं समझते हैं ।

श्री जांगड़े : विषय पर आइये ।

बाबू रामनारायण सिंह : इस के साथ मैं एक बात और कहना चाहता हूं । जब मैं बोलने को खड़ा हुआ तो किसी सदस्य की तरफ से यह प्रस्ताव नहीं आया था, लेकिन आप ने कह दिया कि नहीं साहब इस पर यथेष्ट बहस हो गई है, दी क्वेश्चन बी नाउ पुट (the question be now put) इस विषय पर निर्णय हो जाना चाहिये । मैं आप से निवेदन कर देता चाहता हूं कि यह विषय मामूली विषय नहीं है ।

श्री जांगड़े : माननीय सदस्य को विषय पर आना चाहिये ।

Mr. Deputy-Speaker: What I would say is it must be left to somebody to decide whether the debate has been sufficient or not, and the Chair takes the responsibility. I called upon the hon. the Law Minister to reply. It is no good referring to all those rulings when it is left to the Speaker to decide. I have now given an opportunity to the hon. Member. That was on the definition clause. This is clause 4. If he wants to say anything let him say now. What is the good of saying: "You did not give me any opportunity then"? All that is not relevant.

बाबू रामनारायण सिंह : सभापति महोदय, आप जो फैसला करते हैं वह तो शिरोधार्य है । मैं जो कह रहा हूं वह अनुचित नहीं कह रहा हूं . . . . . .

Mr. Deputy-Speaker: What is the good of wasting time over that matter?

बाबू रामनारायण सिंह : ऐसी बात नहीं है । मैं कहता हूं कि यहां पर जितने सदस्य हैं उन में से जो बोलना चाहें उन को बोलने का अधिकार है । और जैसा यह विषय आप का चल रहा है वह तो ऐसा भयानक है कि इस विषय को तो यहां आना ही नहीं चाहिये था । मैं तो

[बाबू रामनारायण सिंह]

समझता हूं कि जो सरकार इस विषय को यहां लाई है उस सरकार को और उस के साथ चलने वाले को जो भी सज़ा दी जाय वह वाजिब है । सभामति जी, आप को मालूम नहीं है । सैंकड़ों आदमी यहां रोज पकड़े जाते हैं, गिरफ्तार होते हैं, और यहां से ले जा कर दस बीस मील पर छोड़ दिये जाते हैं । कहा जाता है कि सिक्यूलर स्टेट (Secular State) है । क्या सिक्यूलर के मानी यह हैं कि सिक्यूलर स्टेट की आड़ में जितना अनर्थ हो वह सब किया जाय ? यह पार्लियामेंट सारे देश के हक की रक्षा करने के लिये है और इस पार्लियामेंट के आप अध्यक्ष हैं । ऐसी बातें आप के कानों तक पहुंचनी चाहिये और आप को भी इस पर विचार करना चाहिये । यह क्या मतलब है कि चारों तरफ पुलिस और पल्टन का पहरा है, न कोई इधर आ सकता है न उधर जा सकता है और इस तरह यह ज़बरदस्ती की जा रही है । यह बिल्कुल अनुचित कार्य हो रहा है ।

कहा जाता है कि जब यह कानून बन जायगा तो अब तक के जितने हिन्दू कोड के टैक्स्ट (texts) हैं, जितने रूल हैं और जितनी व्याख्यायें हैं वह सब रद्द हो जायेंगी । रिवाज की मैं नहीं कह रहा हूं, मैं टैक्स्ट की कह रहा हूं । सभापति महोदय, आप पंडित हैं, आप सब जानते हैं । जब से दुनिया कायम हुई है और जब से मानव समाज स्थापित हुआ है उस वक्त हमारे देश में वेद का अविर्भाव हुआ है । हमारे देश में मनुष्य का सदाचार, मनुष्य का व्यवहार, मनुष्य का कर्तव्य वेद से निर्धारित होता है । आज जवाहर लाल जी का शासन है, आज उन का राज्य है । उन के प्रतिनिधि अम्बेडकर साहब उस चीज़ को जो कि जब से दुनिया है तब से चली आ रही है उन सब को, एक ही दफा स्वाह करने जा रहे हैं मैं कहता हूं कि यहां जितने सदस्य हैं वह सब इस का विरोध करें । पहिले तो हिन्दू कोड बिल पास ही नहीं होना चाहिये, किसी हालत में पास नहीं होना चाहिये, पर अगर हो भी तो उस का यह भाग तो कम से कम पास नहीं होना चाहिये । यह जो धारा ४ है यह तो किसी हालत में पास नहीं होनी चाहिये । आप को मालूम है, अम्बेडकर साहब को खूब मालूम होना चाहिये, कि वेद का अधिकार उठाने के लिये बुद्ध देव का अवतार हुआ था, बुद्ध धर्म का प्रचार हुआ था । पर वेद का अधिकार नहीं उठा । वैदिक धर्म नहीं गया । आज चार वर्ष से जवाहर लाल जी का राज्य हुआ है और अम्बेडकर साहब आये हैं कि वेद का अधिकार उठा दिया जाय । इन लोगों को इतनी भी अक्ल नहीं है कि ऐसे ऐसे कानून बना रहे हैं । इस देश में इस कानून कोई मानने वाला नहीं होगा ।

श्री श्यामनंदन सहाय : बात तो आप पक्की कहते हैं बाबू रामनारायण सिंह ।

बाबू रामनारायण सिंह : इस तरह का दुःसाहस उन के दिल में कैसे हुआ कि जो सनातन से चला आ रहा है और जब से पृथ्वी और चांद और सूरज हैं तब से चला आ रहा है उस के लिये वह आज कहते हैं कि अब से इस बात को कोई न मानेगा । उन को यह कहने का अधिकार कहां से आया । तो वेद के धर्म को उठाने के लिये बौद्ध धर्म का प्रचार हुआ और बहुत से धर्म आये, इस्लाम भी आया । सब आये और सब खत्म हो गये, लेकिन वेद का धर्म

है और रहेगा । इस को उठाने वाला कोई नहीं पैदा हुआ है और यह चेष्टा करना कि इस धर्म को उठा दिया जाय, बिल्कुल ग़लत और अनुचित है । मुझे तो दुःख है कि ऐसी बातें भारत की संसद में लाई जाती हैं । अभी जैसा हमारे ठाकुर दास जी ने कहा, हमारे धर्म में भी यही कहा गया है कि धर्म का निर्णय करने के लिये मनुष्य का आचार व्यवहार निश्चित करने के लिये—

वेदः स्मृतिः सदाचार आत्मनस्तुष्टिरेव च ।
एतच्चतुर्विधः प्राहुः साक्षाद् धर्मस्य लक्षणम् ॥

किसी का कर्तव्य निर्धारित करने के लिये यह देखा जाता था कि वह वेद के अनुसार है या नहीं । लेकिन उतने से ही काम नहीं चल सकता । उस के बाद देखना यह होता है कि जिस का वर्णन वेद में है, जिस की आज्ञा वेद में है, वह शास्त्रों में भी है या नहीं । धर्म का मार्ग निश्चित करने के लिये वेद था, और उस के साथ शास्त्र थे । लेकिन उतने ही से काम नहीं चलता था । जो विषय वेद में हैं, और शास्त्रों में भी हैं, उस विषय को बड़े आदमियों के सदाचार व्यवहार और आचार विचार में भी आना चाहिये । यह ही सदाचार का अर्थ होता था । लेकिन कोई मनुष्य वहां तक ही पाबन्द नहीं था कि यद्यपि कोई विषय वेद में भी है, धर्म शास्त्र में भी है, और बड़े आदमियों के आचार विचार में भी है तो इस वास्ते ज़रूर ही करना चाहिये ।

अन्त में उस को देखना चाहिये था कि उस का कानशेन्स, (conscience) उस का ज्ञान, उस का जो हिताहित का ज्ञान है, वह उस को कहां तक पसन्द करता है । उस के अनुसार वह कहां तक जाता है, तब जा कर एक मनुष्य का कर्तव्य निर्धारित होता था । जितने वेद हैं, शास्त्र हैं, और सदाचार हैं, उन का तो कहना ही क्या, यहां तो कानशेन्स की बात भी कोई नहीं रही । मिनिस्टर साहब का और इस गवर्नमेंट का विचार यह है कि हमारी जो कानशेन्स है वह हमारे घर पर रहे और आज जो बिल पेश होता है वह पास हो जाये और उस के मुताबिक काम होना चाहिये । कहिये यह कितना बड़ा अनर्थ हो रहा है । मैं तो क्या निवेदन करूं, यहां आप ला (Law) शब्द का अर्थ ही देखिये कि क्या है । यह आप डिक्शनरी में खोल कर देख सकते हैं और देखा होगा । अम्बेडकर साहब पंडित हैं इस में तो मुझे कोई शक नहीं है, उन्होंने ज़रूर देखा होगा ।

डाक्टर अम्बेडकर : मैं नहीं देखता ।

बाबू रामनारायण सिंह : लेकिन वह अपने पंडितपन को तो ताक में रख देते हैं और अजीब ढंग से चल रहे हैं । कानून, क्या चीज़ है ? आज कानून के माने यह हैं कि कोई शक्ति या कोई समाज या कोई व्यक्ति पुलिस या पल्टन के ज़ोर पर नियम बना दे और समाज पर लाद दे । जनाब, कानून के यह माने नहीं हैं । कानून के माने डिक्शनरी के माने हैं "ला इज़ नथिंग बट दी विल आफ़ दी पिपुल एक्सप्रैस्ड इन टर्म्स आफ ला" (Law is nothing but the will of the people expressed in terms of law) अर्थात्, जो समाज की इच्छा होती है, जो समाज का विचार होता है, वही कानून के रूप में रख दिया जाता है, वही कानून कहलाता है । अब ये लोग तो अधिकार में आ गये हैं, पुलिस पल्टन इन के हाथ में है । और पुलिस पल्टन

[बाबू रामनारायण सिंह]

के ज़ोर से पार्टी डिसिप्लिन (party discipline) के नाम में और उस के आधार से और मदद से जो चाहें पास कर देंगे ।

श्रीमती दीक्षित : पार्टी डिसिप्लिन नहीं है ।

बाबू रामनारायण सिंह : पार्टी डिसिप्लिन है और आप लोग इस को पास कर देंगे ।

श्रीमती दीक्षित : नहीं, ऐसा नहीं है।

बाबू रामनारायण सिंह : खैर, नहीं और हां से क्या होगा, क्या है यह तो मैं जानता हूं ।

तो, सभापति, महोदय, कहने का मतलब यह है कि इस तरह के कानून से बहुत अनर्थ होता है । यह देश के हित में नहीं है और न देश के लोग इसे चाह रहे हैं और इस लिये यह कानून नहीं होना चाहिये । अब जैसा मैं ने कहा यहां कितने कितने विप्लव हुए, राष्ट्र विप्लव हुए, लेकिन वेद का आधार नहीं उठाया गया । अब जिस को स्लिप आफ़ पैन (slip of pen) कहते हैं, यानी एक कलम के ज़ोर पर अम्बेडकर साहब चाहते हैं कि वेद उठा दिये जायें । यह बड़ा अनर्थ होगा और यह तो किसी हालत में पास नहीं होना चाहिये । अब जिस तरह से टैक्स्ट हैं, रूल्स हैं, तो उस के बाद इंटरप्रिटेशन (interpretation) है । हमारे यहां कितने कितने ऋषि हुए, और जैसा ठाकुर दास जी ने कहा कितने महर्षि हो गये । कहा है :

वेदा विभिन्नाः स्मृतयो विभिन्नाः
नैको मुनिर्यस्य वचः प्रमाणम्,
धर्मस्य तत्वं निहितं गुहायाम्,
महाजनो येन गतः स पन्थाः ।

कि एक वेद एक बात कहता है, दूसरा वेद उस से कुछ मतभेद रखता है । वेद में भी ऐसी बातें हैं कि जहां पर लोगों को शक शुबहा हो सकता है । उसी तरह से स्मृतियां भी हैं, धर्म शास्त्र भी हैं । वह सब एक मत हैं, ऐसा नहीं कहा जा सकता । किसी धर्म शास्त्र में कुछ है तो किसी में कुछ है । वहां भी मतभेद है । "नैको मुनिर्यस्य वचः प्रमाणम्", ऐसा कोई मुनि भी नहीं हुआ कि जिन का कथन ऐसा प्रमाणित हो कि वही सत्य है और अन्य नहीं, ऐसा भी नहीं है । लेकिन इस के बाद जो हमारे लोग कहते हैं मनु महाराज तो किसी किसी ने डाक्टर अम्बेडकर साहब को भी कुछ इस तरह से कहा है कि वह आज कल के मनु हैं ।

Dr. Ambedkar: I have not accepted that title.

बाबू रामनारायण सिंह : आप मंजूर भी न करें, वे ग़लती कहते हैं क्योंकि अधिकारी भी आप नहीं हैं, यह मंजूर करने की बात नहीं है । जो देने वाले हैं वे आप की खुशामद के लिये ऐसा कहते हैं । अगर आप मनु कहलावेंगे तो हम सब मनु कहलावेंगे, आप खाली क्यों कहलावेंगे ।

तो मनु की जो आज्ञा होती थी, उन का जो हुक्म होता था, वह स्वतः सब कोई मान लेते थे, उन के यहां यह नहीं होता था कि तलवार के ज़ोर से मनाना होता था । वह जब कानून बनाने बैठते थे तो पुलिस और पल्टन का पहरा नहीं होता था । और

मैं तो कहता हूं कि हम लोगों को शर्म आनी चाहिये कि ऐसे ऐसे विषयों पर बहस हो रही है और हम लोग चारों तरफ़ से फ़ौज के पहरे में बैठे हुए हैं कि हमारे पास कोई आये नहीं और हमें कोई बाधा न दे ।

अब आगे कहा गया है, "धर्मस्य तत्वं निहितं गुहायाम्" । तो, सभापति महोदय, यह तो सब कोई जानते हैं कि ये लोग भी कभी कभी सोचते होंगे कि धर्म का विषय इतना कठिन है कि उस का समझना मुश्किल है । उस को जो तत्व कहा जाता है कि किसी गुफा में पड़ा हो, उस को सोचना मुश्किल है । तो हमारे समाज में कैसा सुन्दर माना गया है

"महाजनो येन गतः स पन्था"

ऐसी हालत में जब कि वेद कुछ कहे, शास्त्र कुछ कहे, सदाचार कुछ कहे, और समझना मुश्किल हो तो क्या किया जाय । तो कहते हैं कि "महाजना येन गतः स पन्था" अर्थात् समय के मुताबिक बड़े आदमी जो करते हैं वह करो । आज हमारे देश के बड़े आदमी जो कहलाते हैं वह ऐसे ऐसे काम कर रहे हैं और करने चले हैं कि जिस को आज ही कोई नहीं मानता है तो आगे कौन मानेगा । तो मैं आप से कहता हूं कि इस विषय पर ठिकाने से विचार किया जाय और इस तरह से विचार किया जाय जिस से सब को मौका मिले और सब कोई बोलें ।

अब, सभापति महोदय, यूसेज (usage) के बारे में कस्टम के बारे में भी यह कहते हैं कि कस्टम भी नहीं रहना चाहिये । कस्टम को भी यह लोग जबह करने को तैयार हैं, इस को भी ये खत्म करेंगे । इन को मालूम होना चाहिये कि हमारे समाज में जितने शास्त्र, वेद, पुराण बने, वे तलवार के ज़ोर से नहीं बने, जबरदस्ती नहीं बने । वह तो इस प्रकार के नियम थे कि जब बनते थे तो सब कोई उन को मान लेता था । रीति या कुलाचार या कोई उस को व्यक्त व्यवहार कहते हैं, कोई रीति रिवाज कहते हैं । एक जगह तो, सभापति महोदय, रामायण में यह आया है :—

"रघु कुल रीति सदा चलि आई,
प्राण जाहिं पर वचन न जाई।"

रघु वंश में एक चाल थी, उस कुल की एक रीति थी कि प्राण जायें तो जायें, लेकिन उन लोगों के कहे हुए वचन किसी हालत में नहीं जा सकते थे । आज मैं क्या कहूं, अम्बेडकर साहब की अक्ल को बलिहारी है या इन की सरकार की अक्ल की बलिहारी है कि रीति की बात भी मत करो, और रीति को तोड़ दो, तमाम रीति को तोड़ना चाहिये, ऐसा यह कहते हैं । अब यह समझने की बात है कि जितनी बड़ी यह रीति थी "रघुकुल रीति सदा चली आई, प्राण जाहिं पर वचन न जाई" । आज जो हमारे मनु महाराज बनते हैं तो क्या कहते हैं कि हर तरह के रीति रिवाज़ को या दस्तूर को सब को तोड़ दो ।

श्रीमती दीक्षित : आज क्या हो रहा है ?

बाबू रामनारायण सिंह : आप लोगों का जो ज़ोर हो जाय तो जो अनर्थ न हो थोड़ा है ।

अब, उस के बाद, डाइवोर्स की बात आ जाती है । हमारे देश में पांच छः जातियां हैं जिन की संख्या हम जानते हैं दो करोड़ चार करोड़ से अधिक नहीं है ।

[बाबू रामनारायण सिंह]

उन के लिये तो कानून बना रहे हैं कि डाइवोर्स करने का अधिकार मिले लेकिन बाकी जो हम जानते हैं कम से कम ९० फ़ी सदी समाज के लोग ऐसे हैं जिन के यहां डाइवोर्स चलता है और खूब चलता है, रोज़ चलता है । और सभापति महोदय, यह डाइवोर्स कैसे होता है । दो चार पंच बैठे, स्त्री, पुरुष दोनों आये और घास को तोड़ दिया, बस उन का आपस का सम्बन्ध टूट गया और डाइवोर्स हो गया । इस में एक पैसे का भी खर्चा नहीं है और न इस में कोई झंझट है । हमारे डाक्टर अम्बेडकर साहब अछूत जातियों के बड़े खैरख्वाह बने हैं, उन को मालूम होना चाहिये कि इस तरह के खैरख्वाहों से बच कर रहना चाहिये । अब जितने लोग हैं, उन को डाइवोर्स के लिये डिस्ट्रिक्ट जज के पास जाना चाहिये, तो इस प्रोसीड्योर (procedure) में कितना खर्चा और परेशानी होगी तब कहीं जा कर डाइवोर्स हो सकेगा ।

श्री नजीरुद्दीन अहमद : वकीलों के लिये बहुत अच्छा काम है ।

बाबू रामनारायण सिंह : वकील वकीलों को रोज़गार दे रहे हैं ।

पंडित ठाकुर दास भार्गव : पंचायत को अधिकार दिया जा रहा है डाइवोर्स रजिस्टर करने का ।

बाबू रामनारायण सिंह: खैर अगर पंच के हाथ में हो, तो कुछ हद तक ठीक है, लेकिन वह भी तो गवर्नमेंट पद रहेगा । मेरा तो यह कहना है कि यह बिल ही खत्म हो जाना चाहिये । यह कानून जहन्नुम में जाय तो आप देखिये हमारे यहां तो पंचायत हैं और पंच हैं और हमारे देश में सहज सहज रीति हैं और सहज सहज दस्तूर हैं और कितनी आसानी से सब काम चलता है और आप देखते हैं कि हमारे देश में जो रीति रिवाज हैं वह अपने आप चलते हैं और जनता आप से आप उन को मानती है । कोई कानून ऐसा बनाया जाता है, या कोई निर्णय किया जाता है, तो वह कानून और निर्णय इतना साफ और सुन्दर होना चाहिये ताकि लोग उस को प्रेम से मान लें । और उस कानून के प्रतिकूल जाने में बुरा मानें । लेकिन आज जो नियम और कानून बन रहा है, वह तो इस प्रकार का है कि हमारे देश में इस बात का फ़र्क किया जायगा कि इस कानून को कौन तोड़ता है, और यह कानून चलेगा नहीं, यह तो महज़ जिन के हाथ में अधिकार आ गया है, उन के दिमाग़ की झोंक के सिवा कुछ नहीं है । उन को तो ज़िद सवार हो गई है कि हिन्दू कोड बिल किसी न किसी तरह पास हो जाना चाहिये, देश में क्या विचार है और उस की क्या क्या ज़रूरतें हैं, इस की सरकार को फ़िक्र नहीं है । यहां पर उस के सम्बन्ध में कितना खर्चा हो रहा है, और आखिर इस की ज़रूरत ही क्या है इस की किसी को परवाह नहीं है, बस अन्धाधुन्ध खर्चा किये जाओ और देश को बर्बाद किये जाओ । और झूठ मूठ के व्यर्थ के कानून और भयंकर कानून लोगों की इच्छा के प्रतिकूल पास किये चले जाओ । मैं सरकार से और सरकार की तरफ से हमारे राजा जी और डाक्टर अम्बेडकर जो बैठे हैं, अनुरोध करता हूं कि इस कानून को वापिस लिया जाय । देश इस को नहीं चाहता है, और देश का कल्याण और आप लोगों का कल्याण इसी में है कि आप इस को वापिस लें और मुझे तो आश्चर्य है कि जहां राजा जी जैसे लोग मौजूद हों, वहां इस प्रकार का अनर्थ किया जाय, तो इस से बढ़ कर और लज्जा की बात और क्या हो सकती है ।

सभापति महोदय, मैं अधिक समय नहीं लेना चाहता हूं, लेकिन मैं आप से निवेदन करना चाहता हूं कि यह विषय ऐसा गम्भीर है कि इस पर यथेष्ट बहस की सुविधा दी जाय और एक आदमी भी बोलना चाहे, तो उसे बोलने दिया जाय । इस बिल के सम्बन्ध में सारे देश में हलचल है, और नगर में भी बड़ी हल चल है, और मैं तो समझता हूं कि यह बिल चलने नहीं देना चाहिये और सरकार इस को वापिस ले ले लेकिन अगर वापिस नहीं लिया जाता है और यह चलता है तो इस पर ठीक से बहस होने दी जाय और लोगों को बोलने से रोका न जाय । मैं इस संसद् के जितने सदस्य हैं सब से निवेदन करता हूं कि सारी बातों को समझ कर के इस कानून को पास करें और यह सदैव ध्यान में रखें कि इस तरह के मनमानी के कानून से देश के कल्याण और समाज के कल्याण में कोई बाधा न हो और मैं सारे सदस्यों से निवेदन करता हूं और प्रार्थना करता हूं कि कम से कम यह जो धारा है इस धारा को खत्म कर दें ।

(English translation of the above speech)

Babu Ramnarayan Singh (Bihar): Sir, today you have given me quite early the opportunity to speak on this dangerous subject and for this I thank you. Yesterday and the day before I tried to catch your eye several times and important as the subject was, I failed to get an opportunity to speak. May I make an observation in this connection that there is no doubt that you do full justice in your position about which nobody should have any misgiving.....

Shri Syamnandan Sahaya (Bihar): Nor anybody has.

Babu Ramnarayan Singh: And, indeed, nobody has. But you have to give your rulings with an even hand. Yesterday you were pleased to say that there was some feeling prevalent against you and you wanted that no such feelings be created so that there may be general satisfaction about the working. It is but meet Sir, that thing should be done judiciously. But if somebody worries with the thought that people should regard him infallible on all occasions, he is likely to commit some mistakes. Therefore, I beg of you to do your part justly as you have been doing so far. You should not labour under the apprehension that people might think that you are not doing things rightly.

Shri Jangde (Madhya Pradesh): Please come to the subject.

Babu Ramnarayan Singh: I should also like to say one thing more. When I stood to speak, you in spite of the fact that no Member had expressed that desire declared that sufficient discussion had taken place on the subject and that the question be now put to decide upon the matter. However, I should draw your attention to the fact that the matter is very important.

Shri Jangde: The hon. Member must now come to the subject.

Mr. Deputy-Speaker: What I would say is it must be left to somebody to decide whether the debate has been sufficient or not, and the Chair takes the responsibility. I called upon the hon. the Law Minister to reply. It is no good referring to all those rulings when it is left to the Speaker to decide. I have now given an opportunity to the hon. Member. That was on the definition clause. This is clause 4. If he wants to say anything let him say now. What is the good of saying: "You did not give me any opportunity then"? All that is not relevant.

Babu Ramnarayan Singh: Sir, whatever your ruling it is acceptable. But I am not saying anything unreasonable.

Mr. Deputy-Speaker: What is the good of wasting time over that matter?

Babu Ramnarayan Singh: That is not the thing. All the Members here have the right to speak, and the subject in discussion here is such that it should not have been brought up at all. To me indeed any punishment given to the Government, who have brought this measure here, and their supporters in this regard, would be reasonable. Sir, you probably do not know that hundreds of persons are daily arrested here outside and released ten or twenty miles away. It is said to be a secular State. Does a secular State give liber-

[Babu Ramnarayan Singh]

ty to do all sorts of unreasonable things under the cover of secularism? This Parliament is meant to protect the rights of the people and you are its presiding officer. These things must come to your knowledge and you should give due consideration to them. What is it after all that police has been posted all round and none can pass that way? This is very bad and absolutely unjustifiable.

This Bill abrogates all the previous texts of the Hindu Law and all rules and interpretations given in respect of them. I am not talking of customs, I am simply speaking of text. Sir, you are a scholar and are very well aware that the *Vedas* of our country came to be revealed at the beginning of the world and the establishment of the social organisation. The rules of conduct and duties of men in our country are determined by the *Vedas*. Today we have Pandit Nehru's administration whose representative Dr. Ambedkar wants to abrogate with a single stroke all those rules which have existed since the beginning of the world. I would say that all the hon. Members should oppose such a measure. Firstly, the Hindu Code Bill should not pass at all. But if it has to pass, at least this portion of it, clause 4, must not pass in any case. You know, Sir, and Dr. Ambedkar also knows very well, that Buddhism was preached by Lord Buddha to undo the hold of the *Vedas*. But the *Vedic* religion did not perish. Hardly a few years have passed since the advent of Pandit Nehru's rule and Dr. Ambedkar's coming into office and the *Vedic* principles are sought to be repudiated. Do they not think that such laws should not be passed? Nobody in the country would accept this law.

Shri Syamnandan Sahaya: Babu Ram Narayan Singh is perfectly right.

Babu Ramnarayan Singh: How could they dare to say that things that have been in existence since times immemorial, since the beginning of the earth and the creation of the sun and the moon should now no more be followed? Wherefrom did they get this right? Buddhism was preached to overthrow the *Vedic* religion. Other religions including Islam also came. All came and fell, but *Vedic* religion is still there and would remain as such. No one can destroy it and it is an improper and absolutely misguided effort that is being made to efface it. It gives me pain that such things are brought in our Parliament. As our friend Thakur Das Bhargava just said, religion and the rules of good conduct were determined by the *Veda* and the *Smriti*:

Veda, Smriti, sadacharah
Atmanstushtireva cha,
Etachchaturvidhah prahus-
Sakshaddharmasya Lakshanam.

[The definition of Religion is four-fold: Veda, Smriti, Sadacharah (good conduct) and Atmatushti (self-satisfaction).]

Rules of good conduct were thus fixed in accordance with the *Vedas*. But simply that was not enough. It was also to be seen that what the *Vedas* prescribe, what they command, should also be there in the *Shastras*. *Vedas* set down the path of religion and the *Shastras* supplemented them. But that was not the end all. The rules incorporated in the *Vedas* and supported by *Shastras* should be observed in the conduct, manners and actions of the good people. That is what was meant by the rules of good conduct. But nobody was bound as to their observance simply for the reason that they were laid down by the *Vedas* and *Dharma Shastras* and also followed by good people. In the last, he was to see how far his conscience, his knowledge of good and bad, agreed with them. After consideration of all these factors, his duty was to be finally determined.

10-15 A.M

Not to speak of the *Vedas*, the *Shastras* and good conduct; not even was the conscience spared; the hon. Minister and this Government mean that our conscience be left out and this Bill be passed; and work be done according to it. Just think, what an injustice it means. Need I submit more, you just look up the meaning of the word 'Law' in the dictionary. What does it mean, after all? You can look up the word in the dictionary, and some of you must have seen it already. Dr. Ambedkar is a scholar no doubt; he must have looked it up in the dictionary.

Dr. Ambedkar: No; I don't look it up.

Babu Ramnarayan Singh: But he puts his scholarship aside and is behaving in a strange way. What is Law after all? Law today means a supremacy, or a predominant society making a regulation with the help of a military or police and thrusting it on the society as a whole. Sir, Law does not mean this. Law, according to the lexicon, means:—"Law is nothing but the will of the people expressed in terms of Law"—which, in other words, means—whatsoever is the will of the society, is placed in the form of a law and is called a law. These people

have now gained supremacy: Police and military are at their command, and with the help of police and military and in the name and with the help of party discipline, they may get anything passed.

Shrimati Dixit (Madhya Pradesh): There is no party discipline.

Babu Ramnarayan Singh: There is party discipline and you will pass it.

Shrimati Dixit: No; it is not so.

Babu Ramnarayan Singh: Well, what will come out of 'yes' and 'no'? I know the position.

Sir, I mean to say that a lot of injustice is caused by such a law. It is not in the interests of this country, nor do the people of this country want it, and, therefore, this should not be passed as law. As I told you a number of revolutions took place, great religious revolutions, but the fundamentals of the *Vedas* were not changed. With one stroke of pen Dr. Ambedkar now wants the *Vedas* to be discarded. This tentamounts to an offence, and this Bill should, in no case, be passed. As there are different texts and rules, the interpretations follow them. A number of sages (Rishis) were born in our land. Shri Thakur Das made a mention of them. It has been said:

"Vedah vibhinnah Smritiyo vibhinnah,
Naiko muniryasya vachah Pramanam,
Dharmasya tatvam nihitam guhayam,
Mahajano, Yena gatah Sa Pantha."

[*Vedas* differ and *Smritis* also differ. There is no sage whose word can be taken as final. The secret of Dharma is very deep, follow the path traversed by the great.]

Which means—One *Veda* gives one dictum, while the other shows a difference of opinion. In *Vedas* there are certain things where people can have doubts. Likewise, there are *Smritis* and *Dharmashastras*. All of them are of the same opinion, it cannot be said so. Some *Dharmashastra* gives one thing, while the other gives something else. There also is difference of opinion—*"Naiko Muniyarasya Vachah Pramanam"*—"There is not a single sage whose word can be taken as final": No such sage has born, whose dictum could be authoritative and, hence, to be taken as complete truth, and the rest to be discarded. Not even so. But after this those of us who make of a mention of Manu Maharaj—some amongst them say likewise, that Dr. Ambedkar is Manu of the day.....

Dr. Ambedkar: I have not accepted that title.

Babu Ramnarayan Singh: Do not accept, please. They say it wrongly, as you, in fact, do not deserve it: this is not a thing to be accepted. Those who confer this title upon you do it by way of flattery. If you are called 'Manu', all of us, too, would like to be called so; why you alone.

And whatever were the dictates of Manu, whatever were his orders, were automatically followed by everybody. They were not propagated at the point of sword. Whenever he were to sit to make a law no police and military were kept on guard I go to the extent and say that we should feel ashamed that when such a subject is being discussed we are encircled and guarded by police and military lest somebody should come and interrupt us. Furthermore, it has been said: *"Dharam sya Tatvam nihitam guhayam"*—The secret of *Dharma* is very deep it is hidden in the caves. Sir, everybody does know that these people must have thought at times that the subject of *Dharma* was so difficult that it could not be understood. Its secret, which is said to be lying in some cave, is very difficult to find out. How beautifully has, therefore, been said: *"Mahajano yena gatah Sa panthah"*—"That, indeed, is the path which was followed by great men." In such circumstances, when *Vedas* say something, *Shastras* uphold some thing else, conduct rules ordain something else and it may become difficult to make a right choice then what should be done? It is, therefore, said: ***"Mahajano Yenagatah Sa panthah"—i.e.,*** whatever is done by the great should be followed. Those, who are called great in our country today, are doing and out to do such things as are not acceptable to anybody even today. Who will accept them in the days to come? I beg to submit that this subject should be considered in a definite light, and in such a way that everybody may get an opportunity to think and have his say.

Sir, about usages and customs they say that custom should not exist. These people are prepared to do away with customs and will surely do away with them. They should know that the Scriptures, *Vedas, Puranas* were not introduced at the point of the sword or by any kind of coercion. Those were such regulations as were be acceptable to any body when formulated. Some give the name 'customs' 'family-customs', some name it

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as 'family conduct' while others call them 'customs and traditions.

At a certain place in Ramayana it is said:

"Raghukul riti sada chali ayi,
Pran jahin par vachan na jayi."

(Raghu Dynasty has its ever-present custom Life it will give, but not discard the word.)

It was a trait of the Raghu Family, yes—a tradition, a custom: Life should not be cared for, it should even be sacrificed, but the words given by them should in no case, go futile. What need I say today? Cheers to the talent of Dr. Ambedkar or the talent of this Government which tells us not to talk of customs and to do away with truth and customs. They say, all the customs and traditions should be done away with. This is just a thing to be understood as to how important the customs were *"Raghukul riti sada chali Ayi, Pran Jahin Par Vachan Na Jayi"*. Just look to it that the man who seeks to become our Manu today, says that there should not be any custom nor traditions whatsoever; we should do away with all of them.

Shrimati Dixit: But what is happening today?

Babu Ramnarayan Singh: If your will were to carry the day, the words could happen. Now comes to question of divorce. In our country, there are some five or six such communities which we know are not more than two to four crores in number. For them they are making this laws so that the right of divorce for them may be secured. In the rest 90 per cent. of the society, we know that divorce is a thing of daily routine. And, Sir, how is this divorce given? Two, four or five of them sit together, both the contending parties come and they break some stalk of grass; and their mutual relations are broken—this completed the "divorce". Not a penny was to be incurred on this, nor any botheration. Our hon. Dr. Ambedkar is a well-wisher of the Untouchables and they too should know that such well-wishers should be shunned. Now all of them will have to go to the district judge for divorce, what a lot of expenditure and botheration will this procedure mean? Then alone will divorce be granted.

Shri Naziruddin Ahmad (West Bengal): .... A decent work for lawyer!

Babu Ramnarayan Singh: Lawyers giving maintenance to lawyers!

Pandit Thakur Das Bhargava: The *Panchayat* is being empowered to register the divorce.

Babu Ramnarayan Singh: Well, even if it is in the hands of the *Panch*, it is right to some extent, but that too will be a Government post. I assert that the Bill be scheduled. Let this law go to hell and then you will see how easily the entire system works. We have *panchayats* and *panchs;* and in our country customs and usages are pliable they will continue to hold good and people would accept them automatically. If any law is formulated or any decision taken, it should be so clear and precise as may be amiably accepted by people, and they may not think of going against it. But the law that is being passed here, is such that people in our country will take pride in breaking it, and will not act upon it. This is nothing but a whim of those who today have gained power. They are obstinacy-ridden and say that the Bill must be passed somehow. What the country thinks, and what she needs, the Government never worry about it. What is being spent for it here, and what, after all, is its necessity, nobody cares for it: the Government go on spending money lavishly and thus ruin the country; go on passing baseless and futile laws against the will of the public. I insist upon our Rajaji and Dr. Ambedkar that the Bill be withdrawn: the country does not want it. And the good of the country, good of us all, lies in its being withdrawn. This simply astonishes me that such an injustice is being here where personages like Rajaji are present. There can be nothing more shameful and sorrowful than this.

Sir, I do not want to take more time but I want to request you that the subject is so serious that it needs a proper debate; and if any hon. member wants to speak on it, he should be permitted to do so. This Bill has created a stir in the entire country as also in the City, and I hold that the Bill should not be proceeded with. The Government should withdraw it, and if it is not withdrawn, but proceeded with instead discussion in a proper way be conducted and the hon. Members be not stopped from speaking on it. I would request all the hon. members to understand all the pros and cons and pass it, then. They may also bear in mind that the good of the country and the society be not impaired in any way by this self-willed piece of legislation, and I again submit with respect to all the hon. members, that this clause at least be omitted.

Shri Sarwate (Madhya Bharat): I rise to oppose the amendment of Dr. Ambedkar because I consider part (b) of the amendment as unnecessary and superfluous while part (a) is quite undesirable.

Dr. Ambedkar: You may abuse me as much as possible, provided you do not take much time. I am concerned more with the time than with the abuse.

Shri Sarwate: Sir, I am not abusing him. I am only opposing his amendment. If not interrupted, I shall take very little time.

I submit that by virtue of article 254 of the Constitution, all laws made by the State which are repugnant to or are inconsistent with the laws made by Parliament stand *ipso facto*, to that extent, inoperative. The other laws which may possibly be referred to in this connection are laws made before this code by the Centre. In their case the later law will precede the previous law. Therefore, in both the cases, that is to say, in the case of laws made by the States and in the case of laws made by the Centre, they would, to that extent, to which they are inconsistent to the code, be *ipso facto* inoperative. Therefore, I say part (b) is unnecessary and superfluous. As regards part (a), the effect of this amendment would be that all customs and all texts or rules or interpretation of Hindu law and customs would be made inoperative, subject to the saving clause at the beginning, namely, all such customs as would be saved by being included in any of the later provisions. My submission is that this is entirely undesirable. The Hindu religion has been living and progressing. It has been said that it is dying and decadent. It has been compared to the shameful life of a coward who flies away from the field of battle. I would only submit that it is often ignored that one who fled from the battle field may return only to vanquish those who erstwhile were the victors. It must be remembered that the Hindus have repelled those who were for a time, and only for a temporary time, able to overcome them. In the last century the Maharattas in the Maharashtra, from where Dr. Ambedkar himself comes, and then the Sikhs in the north, were successful in achieving their independence and establishing their kingdoms. But I need not go in to past history either ancient or modern. In our own day and before our own eyes, we have seen this accomplished. Have we forgotten that the present Parliament of which Dr. Ambedkar, is an illustrious Member is the result of.....

Dr. Ambedkar: I have no right to be here. I have sneaked in.

Shri Sarwate: I wish he makes no confession of that nature

This very Parliament is an illustration that the Hindus repelled the foreigners who had dominated over them temporarily. And what was the element or factor which gave this life or this rejuvenating characteristic to the Hindu religion? In my opinion, it is custom and by custom I mean such custom as is defined and accepted by this House in clause 3—custom, which is a rule that is certain and not unreasonable or opposed to public policy. It is said that custom might be of a bad nature and therefore it requires to be mentioned here. But to say so is contradiction in terms: just as contradictory as today वंध्यासुत For custom is defined here as that which is not opposed to public policy. Therefore, such customs as are opposed to public policy or morality, they will stand, *ipso facto* repealed. Those customs alone will be saved as would be good customs.

The House will realise that the sources of Hindu law have been described as:

श्रुति स्मृतिः सदाचारः स्वस्य च प्रिय मात्मनः ।

First of all the *Srutis* and *Smritis* lay down the fundamental common background And then सदाचार and स्वस्य प्रियम् provide for variety, that is to say the element which would suit the various regions of the country. It has to be borne in mind that India is a continent in extent and its population is equal almost to the population of the U.S.S.R. in the East and to the U.S.A. in the West put together. So unless there is variety of the law, the law would be absolutely oppressive and it would be difficult to make it suit the various requirements of the different regions.

Now I would refer to another text of Hindu Law—I mean that law as it prevails at present. Yajnavalkya says:

यस्मिन् देशे य आचारो व्यवहारः कुलस्थितिः । तथैव परिपात्यो सौ ॥

That is to say, whatever customs, practices or family usages prevail in the country shall be preserved intact. And the *Vyavastha* or rule in this connection is stated thus:

[Shri Sarwate]

येषां परम्परा प्राप्ता पूर्वजैरप्यनुष्ठिता: ।
त एव तैर्न पुष्येदु: आचारैर्नैरे पुन : ॥

They are not liable to censure, whose predecessors used to practise these usages. In modern language, it means that the customs are ancient and from time immemorial. And others which are not so would not be observed.

So with this *Vyavastha*, the Hindu religion was vitalising itself and adopting itself to different regions.

Now, I shall take a small illustration and show that if we entirely do away with customs by accepting this amendment what would be its effect. There are many reasons why the amendment should not be so accepted. First of all, I trust even the learned Law Minister is not conversant with all the good usages that are prevalent in this country from Cape Comorin in the south to the Himalayas in the north. Neither are the Members conversant with all of them. And even if they are, they would not be in a position either to convince the learned Doctor or to convince the other Members of the House of the utility or significance of those usages and of the importance in which those usages are held in particular parts of the country. Therefore, I tried in an amendment of mine, which was for a technical reason not accepted or not put forward, to provide a simpler device by which the local Legislature may be able to supplement this law. That, however, has gone. Therefore, I submit that because of ignorance of all the good usages in the country we should not say "save as otherwise provided in the provisions.....". The effect of this saving clause will be nil and part (a) of the amendment will do away with all good customs, whether they are repugnant or not to the law.

According to part (b) only those laws which are inconsistent with the present law are only repealed, whereas in the case of customs, whether repugnant or otherwise, they have all been abrogated. This is a very wide provision which should not be allowed. Nothing would be lost if it is omitted altogether. A custom is governed by all the requisite qualifications mentioned in clause 3, which the House has already passed and laws would be governed by article 254 of the Constitution.

I shall now take one more instance. Marriage is after all a social institution, meant to satisfy a social need. If social circumstances vary to a great extent in various regions of the country several provisions would have to be made in the law which is to be enacted. In the present Hindu law this is achieved in two ways. There are firstly various schools of Hindu law. There was the law of *Dayabhaga* and *Mitakshara*. The common background is the Yajnavalkya's and Manu's *Smritis*. The variety was given by *Dayabhaga* and *Mitakshara*. Further there were in मिताक्षरा various schools which governed different parts. There was the *Mithila* school, the Banaras school, the Madras school and the Maharashtra school. This was one of the ways in which variety was provided in Hindu society, which I maintain will for that reason never die. Secondly, there was the *achar* and on account of this the Hindu law and religion have been progressive and satisfying the needs of all, which were its vitalising factor. It is the variety which, added to the common background, has kept the religion alive throughout the century. Invaders have come and gone but Hinduism is still progressing.

I shall now take up the question of monogamy. Irrespective of what the law givers lay down, society would adopt monogamy or other systems of marriage according to its needs. Good law givers therefore ought to provide for this varying need. One of the factors which govern the form or institution of marriage is the ratio between the males and females. If there is an equal ratio between the sexes there will be monogamy and society is bound to be happy. But if there is very great disparity between the sexes then society will have to adjust form of marriage accordingly. If females exceed the number of males then bigamy or polygamy would have to be allowed. Otherwise the result would be either adultery or increase in illegitimate children.

Shri Naziruddin Ahmad: Adultery is permitted by this Bill.

Shri Sarwate: I will not take notice of it. There was a common phenomenon which had been observed during the war. When in U.K. the adult male population went to the war fronts there remained behind in the country an excessive number of women and the result was a great increase in the number of illegitimate children, which has now become a very difficult question for solution. This phenomenon has occurred in other countries also. So also if the number

of men is much more than the number of women then poliandry would come in in one form or another. Even in that case the same results would follow. I am in favour of monogamy, both because it is a law of nature and society has enjoined it and it is in accordance with modern trends. In that respect fortunately in India the ratio between the sexes is equal but even here there are certain other factors which have to be taken into consideration. I have some figures about the ratio in the different provinces. These figures show that the ratio in Madras and Bombay is equal.

Dr. Ambedkar: You are pleading for polygamy?

Shri Sarwate: Let me proceed. In Bengal and some other provinces the males are preponderating and the females are less. So if you provide only one form of marriage for all these provinces it may not do.

Shri Brajeshwar Prasad (Bihar): Has my hon. friend studied the ratio between the different age groups—the males between the ages of 16 and 35 and the proportion of females between the ages of 16 and 35? That will throw light on the question whether there should be monogamy or polygamy.

Dr. Ambedkar: He wants you to study the proportion of the different age groups among the sexes. But why do you not leave the argument to younger people?

Shri Sarwate: Every body has to do his work. Dr. Ambedkar has to do his work and I am doing mine.

To proceed with my argument, it is irrelevant or unnecessary for developing my argument to show what the proportion of the males to the females in the different age groups is. I want here to show that in different tracts differnt conditions prevail and would have to be provided for as has been done in the prevailing Hindu law through the different schools and through the *achar*. This is a case where it is absolutely necessary that variety must be provided for and it can be done only by allowing customs, customs which are ancient and are governed by public morality.

I conclude with this observation, that this amendment is entirely unnecessary. Sub-clause (a) is undesirable and sub-clause (b) is unnecessary. Therefore, this clause should be entirely dropped and the amendment disallowed.

Dr. C. D. Pande (Uttar Pradesh): I rise to speak in favour of omitting the clause which seeks to abrogate the validity of customary law. I think this clause enlarges the scope of the Hindu Code. Let me go briefly into the genesis of the Hindu Code Bill. What was the necessity of this Bill? If you know the background you will know how absurd it is to maintain this clause in this Code. The genesis of the Hindu Code Bill is that there was a constant demand, and there was a feeling in the minds of the leaders of the Hindu society, that there must be a law to be in conformity with the civilised concept of human society. There are only two things for which a case has been made out conclusively, and we stand for them: one is acceptance of monogamy, imperatively and without exception; the other thing is that those who seek divorce in certain cases of hardship should be able to get it, that there should be no difficulty in that process of separation, annulment or divorce. These are the only two things for which a case has been made out and I do not see if any similar case has been made out for the abrogation of the validity of customary law. Have you ever heard of a single representation or of a single meeting of the people who are governed by customary law, that this law should be changed, that it should be brought in conformity with the strict law of Manu? Or, have you heard that they are tired of their customary law and they want to come within the orbit of Manu's law? No; I have not heard of one single representation, or of one single meeting, either in the Press or on the platform, demanding that. There has been a constant demand for improvement in the law as far as monogamy goes, and also as far as divorce goes. People say there is a slur on our name in foreign countries. Well, that may be so; for that we have now accepted the principle of monogamy and of divorce. But I do not like that in the garb of making changes in the Hindu law you should introduce things which are absolutely detrimental to the interest of more than 80 per cent. of the people of this land. If you analyse the population of this country, how many people, will you find, governed by Manu's law? Only a handful of Brahmans, Kshatriyas and Vaishyas. But even they are governed by local laws as well and local laws have got an overriding position over Hindu law. Hindu law was originally not a textual law but a customary law and it was codified by Manu, Yajnavalkya and others in course of time.

Difficulty was experienced by the Legislatures of India in the course of the last 100 years in these matters. And they made certain laws about

[Dr. C. D. Pande]

specific drawbacks which were thus removed. Now the demand has arisen for change with respect to monogamy and divorce. We concede it, but how do you presume that there is a desire for change so far as customary law is concerned? What is customary law? It is a natural law, it is a dynamic law, it is a growing law, it has got the force of the needs of the time; if you do not allow that growth, that dynamic character in the society you will become rigid, you will be doing harm to the Hindu society just as Manu's law has done harm, according to you, in the course of the last 3,000 years. Do you want that this should be perpetrated in the vast sections of the society which is not governed by that law? This House stands for the principles of monogamy and divorce. Now in the progressive age you want to create hardships in the matter of those very things in respect of which you want to give facilities? It is absolutely inconceivable to me that you desire to do so. It will be a retrograde step.

11 A.M.

There is another reason for customary law being maintained. It will be impossible for the State to maintain adequate number of judicial officers and magistrates to deal with cases of divorce or judicial separation. (*An Hon. Member*: Government have enough money.) They do not have enough money even to maintain magistrates to try ordinary cases, which are pending for several months together. You have no idea as to how many more magistrates will be needed. Even if you have money, and you are bent upon doing it, do you know the hardship involved? The cost may be ignored, but the hardship cannot be ignored, because in this country unfortunately whenever a citizen comes into contact with Government machinery he is subjected to vexations at every step. I myself have been a functionary of the Government and I have a clear idea of these things. I had some influence, but if I were an ordinary non-official and I went to a court of law, I know how much attention I would receive. An ordinary citizen finds it difficult even to get a ration card. Do you think it will be easy to get a divorce certificate in a court of law for a person who is ignorant and poor?

Pandit M. B. Bhargava (Ajmer): Courts will be more efficient hereafter.

Dr. C. D. Pande: Things should be accepted as they are. You cannot expect to improve things all of a sudden. There is no justification for creating hardships. Why do you want to abrogate the customary law? Have you received any representation for the abrogation of customary law? Why do you insist on it? Why do you insist on creating difficulties?

Shri A. C. Shukla (Madhya Pradesh): Because it is against public morality.

Dr. C. D. Pande: Let not morality be governed by law. If you have any illusion that you can govern people's morality by law, you are mistaken.

Shri Lakshmanan (Travancore-Cochin): He is not addressing the Chair. He is addressing individual Members as 'you'.

Dr. C. D. Pande: I am sorry. It is a manner of address to say 'you'. 'You' does not mean an individual Member. It means the Legislators here.

Mr. Deputy-Speaker: No interruptions please.

Dr. C. D. Pande: I do not mind the interruptions, because the case that I am putting before you is sustained by the will of the people outside. I know the people. I know their difficulties. I know the prevalence of the customs. The difficulties that will be created will be enormous. You have not got the machinery to deal with the cases. The cases may be in far off places where there will be no Government machinery. People manage their affairs in an automatic manner. There is an automatic adjustment in social affairs. That automatic adjustment of the society will be disturbed. You wish to take upon yourself a responsibility for which you are not prepared. Moreover it is uncalled for. There is no justification for it. No case has been made out for the abrogation of customary law. A case has been made out for making divorce easier, not for restricting the scope of divorce. Why do you want to enact legislation which is not in consonance with the likings of the people, and which goes against the very spirit of this Code? This Code seeks to confer divorce and you want to restrict divorce. If this contention has any validity, then I submit the Law Minister will consider the matter carefully and sympathetically.

श्री ओरांव : उपाध्यक्ष महोदय, इस हिन्दू कोड बिल के बारे में हमें बहुत कुछ बोलना नहीं था । लेकिन ऐसी परिस्थिति आ गई है कि मजबूरन बोलना

पड़ रहा है। मेरे कहने का मतलब यह है कि शेड्यूल्ड ट्राइब्स (Scheduled Tribes) आदिवासी जो हैं वह न हिन्दू हैं, न मुसलमान हैं और न ईसाई हैं। वह लामजहब हैं। वह पहिले इस बिल में नहीं शामिल किये गये थे वह चाहते भी नहीं थे कि वह इस बिल में घसीटे जायें। लेकिन अब गौर कर के देखने से मालूम हुआ कि हमें भी इस बिल में घसीटा जा रहा है। मैं बतलाना चाहता हूं कि हमारे बीच में जो डाइवोर्स होते हैं, शायद दुनिया के किसी कोने में वह डाइवोर्स नहीं होते हैं। हम जानते हैं कि सन्तान होने के पहिले ८० या ८५ फी सदी से कम डाइवोर्स नहीं होते हैं। उस में अगर कोई कार्यवाही करनी है, डाइवोर्स जिसे करना है वह पंच के सामने रेकार्ड कराने में बहुत बड़ी आफ़त है। यह कहा जाता है कि अपनी पंचायत में जा कर रेकार्ड कराना होगा। वहां का मुखिया अदालत में जा कर दर्खास्त देगा। अगर लड़का या लड़की जो सम्बन्ध विच्छेद करने वाला है उन में से एक ने न माना तो मामला आगे बढ़ेगा, मुकदमा अदालत में जायगा। हम जानते हैं कि कितने डाइवोर्स होते हैं। बारह महीने में जो मुकदमे दायर होंगे वह १८ महीनों में भी फैसले न होंगे। इस लिये हमें हिन्दू कोड बिल में घसीट कर लाना अन्याय ही नहीं बल्कि हमारा मरण है। इस लिये हम डाक्टर साहब से कहेंगे कि वह हम को इस से बरी कर दें।

दूसरी बात मैं यह कहना चाहता हूं कि हिन्दू कोड बिल में जो बात हम देखते हैं, भली व बुरी दोनों हैं। हो सकता है शहर के रहने वालों को बुरी मालूम न हो, लेकिन हम देहात के रहने वाले हैं। सब किस्म के लोगों से मिलते जुलते हैं। सारे के सारे लोग इस के बख़िलाफ़ हैं। ऐसी हालत में हम देखते हैं कि जो पार्लियामेंट के मेम्बर हैं, लोगों के प्रतिनिधि हैं उन के हक में ही यह अच्छा न होगा बल्कि गवर्नमेंट के हक में भी अच्छा न होगा कि इस को पास किया जाय। इस वास्ते मैं कहूंगा कि जब तक नया चुनाव न हो जाय तब तक इस कानून को हर्गिज़ पास न करना चाहिये।

(English translation of the above speech)

Shri Oraon: Sir, I had not to speak much about this Hindu Code Bill; but we are now confronted with a situation which compels me to speak something. I mean to say that Scheduled Tribes and Aboriginals are neither Hindu nor Muslim nor Christian. They are without any religion. First they were not included in this Bill, nor did they want themselves to be dragged into it. But now I find that we too are being dragged into this Bill. I want to say that the divorces which take place amidst our Community, perhaps do not take place in any part of the world. We know that not less than 80 or 85 per cent. divorces take place before any child is born as a result of the marriage. If some action is to be taken there, or a divorce is to take place, we shall be handicapped in getting the case recorded with a *Panch*. It is said that the case will have to be recorded in our own *Panchayats*. The *mukhia* of that place will go to the court and apply. If either of the two—man or woman, who come for divorce do not agree to his decision, the case will proceed further and move to the court. We know how many divorces take place. Not even in 18 months will the cases registered in only twelve months be decided. Dragging us into the Hindu Code Bill, therefore, is not only injustice but our virtual death. I would request the learned Doctor, therefore, to exclude us from it.

Next, whatever we see in the Hindu Code Bill is both good and bad. Maybe, people living in the cities may not know this, but we are villagers and come across people of all types. All of them are against it. In this state of affairs we see that on the part of the members of the Parliament, the representatives of people as they are, this will not be a right course of action nor will it be right on the part of the Government to pass this Bill. It

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is, therefore, I must say that this Bill should not be passed unless new elections are held.

श्री जांगड़े : उपाध्यक्ष महोदय, मैं गत चार पांच दिनों से माननीय सदस्यों के जो भाषण हो रहे हैं उन को सुन रहा हूं। उन के भाषण सुनने से मुझे यह पता नहीं लगता कि धाराओं पर विचार हो रहा है पर ऐसा मालूम होता है कि जनरल डिसकशन (general discussion) चालू हो गया है ।

अभी हमारे माननीय सदस्यों ने जो इस मेरिज एंड डाइवोर्स बिल (Marriage and Divorce Bill) के विरुद्ध शंकायें उठाई हैं मैं उन को गिनना चाहता हूं और उन का समाधान करना मैं अपना कर्तव्य समझता हूं।

अभी हमारे श्री सी० डी० पाण्डे ने कहा कि जो ९० प्रतिशत लोगों में मेरिज और डाइवोर्स का लूज़ कस्टम (loose custom) है उस को ज्यों का त्यों रहने दिया जाय । उन्होंने यह भी कहा कि द्विज जातियों में जहां पर यह डाइवोर्स की प्रथा नहीं है उन को इस के लिये क्यों मजबूर किया जाता है ।

पंडित ऐम० वी० भार्गव : उन्होंने यह नहीं कहा ।

श्री श्यामनन्दन सहाय : यह नहीं कहा जा रहा है। आप उन के साथ क्यों बेइन्साफी करते हैं ।

श्री जांगड़े : उन्होंने कहा कि येह जो मेरिज कोड बनाये जा रहा है इस से विवाह शादि का प्रोसीड्योर (procedure) बहुत लम्बा हो जायगा और इस से देहात वालों को बहुत दिक्कतें होंगी ।

हमारे बाबू रामानारायण सिंह जी तो हमें सरमन (sermon) पढ़ाने आते थे और वह किसी धारा पर नहीं बोल रहे थे ।

बाबू रामनारायण सिंह : आप इस के लायक हैं ।

श्री जांगड़े : अब जो ९० प्रति शत लोगों के बारे में कहा जा रहा है तो मैं उन के अन्दर बहुत समय से समाज सुधार का कार्य कर रहा हूं और उन की नस नस को अच्छी तरह से जानता हूं । उन के तलाक और शादियों के बारे में मैं खूब अच्छी तरह से जानता हूं और जो दूसरे लोग उन की तरफ़ से बोल रहे हैं वह इस को नहीं जानते हैं। वह तो सिर्फ इस बिल में अड़ंगा लगाने के लिये बोलते हैं ।

आप ने कहा कि यह जो ईजी डाइवोर्स (easy Divorce) है वह बहुत अच्छा है । मैं आप को बताना चाहता हूं कि शूद्रों में जो डाइवोर्स का रिवाज है वह इतना निकम्मा हो गया है और इतना पुराना पड़ गया है कि उस का दुरुपयोग हो रहा है। आज इस के जरिये हमारी मां बहिनों की इज्जत लूटी जा रही है और वह कलकत्ता और बम्बई में बेची जाती है और दूसरे धर्मों में चली जाती है । आज शूद्रों में एक स्त्री की इतनी भी कद्र नहीं है जितनी की एक गाय की होती है। गाय को तो केवल एक बार बेचा जाता है पर स्त्रियों को तो बार बार बेचा जाता है । जो हमारा रिवाज है वह आज उद्दण्डों का रिवाज हो गया है, वह आज गरीबों का रिवाज नहीं रहा है । आप कहते हैं कि यदि हम कस्टम को हटा देंगे तो लोगों का अदालत में बहुत खर्चा होगा । परन्तु डाक्टर अम्बेडकर की बुद्धिमत्ता की मैं प्रशंसा किये बग़ैर नहीं रह सकता कि उन्होंने यह उपाय निकाला है कि जो जाति का पंच का निर्णय है उस को

जब तक गवर्नमेंट की मंजूरी न मिल जाय तब तक वह कस्टम बाइंडिंग (binding) नहीं है। आज हमारे यहां यह हो रहा है कि कस्टम के मुताबिक आज शादी की, सप्तपदी के अनुसार, और दो रोज बाद उस को बेच दिया। उस को लोग बेचने को तैयार हो जाते हैं और तलाक देने को तैयार हो जाते हैं। तो ऐसी सूरत में धार्मिक विवाह और सप्तपदी का क्या अर्थ रहा ? आज जो पुराने रिवाज हैं वह सड़े गले हुए हैं। आप उन को कायम रखना चाहते हैं। आप हिन्दू धर्म की दुहाई दे कर उन को रखना चाहते हैं। लेकिन मैं आप को बतलाना चाहता हूं कि हिन्दू समाज के ९० प्रति शत लोग इन से बिगड़ रहे हैं। औरतों की कोई कद्र नहीं है। औरतें तड़प रही हैं। उन के सम्बन्ध में आप कहते हैं कि हम उन को देवी मानते हैं, उन को सौभाग्य लक्ष्मी मानते हैं, लेकिन यह आप सब गलत बातें पेश कर रहे हैं।

अभी आप लोगों ने कहा कि आप द्विजों में डाइवोर्स नहीं चाहते हैं। उन को क्यों डाइवोर्स के लिये मजबूर किया जाता है। बहुत से सदस्यों की यह राय है। आप तो शेर और गाय को एक ही स्थान पर रखना चाहते हैं। क्या शिकारी और जो उस का खाद्य है उस को एक साथ रखना चाहिये ? क्या आप पूर्व और पश्चिम को मिलाना चाहते हैं ? पूर्व और पश्चिम कभी भी नहीं मिल सकते। एक तरफ आप कहते हैं कि द्विजों में डाइवोर्स का हक नहीं होना चाहिये, दूसरी ओर आप कहते हैं कि शूद्रों में लूज डाईवोर्स रखना चाहिये जिस से कि हमारी नैतिकता गिरती जा रही है, हमारी मानवता गिरती जा रही है। हिन्दू कोड जो बनाया गया है वह इस फर्क का जो कि एक्स्ट्रीम (extreme) किस्म का है दूर करने के लिये बनाया गया है और कन्या कुमारी से काश्मीर तक जो द्विज और शूद्र रहते हैं उन को मिलाने के लिये लाया गया है। आप हिन्दू धर्म में जागृति फैलाना चाहते हैं। मैं कहता हूं कि हिन्दू कोड बिल इस में बहुत सहायक होगा। हमारे डाक्टर अम्बेडकर ने इस को बना कर जिस नैतिकता का परिचय दिया है आप उस का परिचय नहीं देना चाहते हैं। मैं तो इस सम्बन्ध में यह कहना चाहता हूं कि द्विजों और शूद्रों को मिलाने का अगर कोई तरीका हो सकता है तो वह यह हिन्दू कोड बिल ही हो सकता है।

आप कहते हैं कि जो इस के अन्दर आना चाहे उस को आने दिया जाय पर जो न आना चाहे उस को मजबूर न किया जाय। किसी को मानोगोमी (monogomy) और डाइवोर्स के लिये मजबूर न किया जाय। मैं कहता हूं कि इस विषय में ग़लत तरीके से प्रचार किया गया है। गवर्नमेंट के पास पैसा नहीं है और गवर्नमेंट पैसा दे कर प्रचार नहीं करवाना चाहती है। जो हिन्दू कोड के समर्थक हैं वह इस का प्रचार नहीं कर रहे हैं। जो विरोधी हैं वह प्रचार कर रहे हैं। मैं ने एक बार सुना कि करपात्री जी ने भाषण दिया कि इस से तो बाप और बेटी का विवाह हो सकता है। इसी तरह से और और ग़लत प्रचार किया जाता है। यह कहा जाता है कि इस से तो भाई बहिन की शादी होगी। कहीं पर यह प्रचार किया जाता है कि हिन्दू धर्म का नाश हो रहा है। मैं कहता हूं कि हिन्दू धर्म में जो रोग आ चुके हैं और जो भाग सड़ चुका है उस को दवा डाल कर जोड़ा जा रहा है। यही हिन्दू कोड का मंशा है। इस के सम्बन्ध में इसी प्रकार का प्रचार हो रहा है। आप कहते हैं कि हम डाइवोर्स नहीं चाहते, फिर दूसरी ओर हमारे लिये चाहते हैं कि वह रखा जाय। द्विजों में लड़की की

[श्री जांगडे]

शादी हो जाय और यह विधवा हो जाय तो फिर उस की शादी नहीं हो सकती चाहे वह मर तक जाय । परन्तु पुरुष चाहे तो सौ बार शादी कर सकते हैं । यह कहां का न्याय है ? जैसे राम ने एक बार शादी की . . .

अध्यक्ष महोदय : आप राम को छोड़िये ।

श्री भट्ट : इन को तो इजाजत दे देनी चाहिये ।

श्री जांगड़े : तो मैं यह कह रहा था कि शूद्रों में जो कस्टम है वह कितना खराब है । उस को हम बदलना चाहते हैं । एक-एक आदमी पांच पांच या छः छः बार शादी कर सकता है । किसी के घर में सप्तपदी औरतें रहना नहीं चाहतीं और वह उद्दंडों के साथ चली जाती हैं । बार बार औरतों के बदलने में उन का बहुत रुपया खर्च होता है उन को सम्पत्ति का आधे से ज्यादा खर्च सिर्फ़ औरतों को लाने में हो जाता है । तो जो आदमी और शादी कर के लावे और वह दूसरों के यहां चली जाय यह कहां का न्याय है । इन बुराइयों को दूर करने के लिये यह कानून लाया गया है जिस में आप हिन्दू धर्म का नाश देखते हैं ।

इस लिये मैं ज्यादा समय न ले कर यह कह देना चाहता हूं कि यदि आप हिन्दू धर्म की जागृति चाहते हैं और हिन्दू धर्म को कायम रखना चाहते हैं शूद्रों को मिलाना चाहते हैं तो हमें हिन्दू कोड बिल पर जो मेरिज और डाइवोर्स का संशोधन पेश किया गया है उसे स्वीकार कर लेना चाहिये ।

(*English translation of the above speech*)

Shri Jangde: Sir, I have been listening to the speeches of the hon. Members for the last four or five days. From their speeches it appears to me that clauses are not being considered, but that general discussion has started.

I wish to recount the objections raised by the hon. Members against this Marriage and Divorce Bill and I consider it my duty to reply to them.

Just now Shri C. D. Pande said that a loose custom of marriage and divorce prevalent among 90 per cent. of the people should be left intact. He also asked why should the *Dwij* communities, among which this divorce custom does not obtain, be compelled to adopt it.

Pandit M. B. Bhargava: He did not say this.

Shri Syamnandan Sahaya: This was not said. Why are you unjust to him?

Shri Jangde: He said that this matrimonial code, which is going to be passed, would greatly lengthen the procedure of marriage etc. and would create many difficulties for the village people.

Babu Ramnarayan Singh came only to give a sermon to us. He did not speak on any clause in particular.

Babu Ramnarayan Singh: You deserve it.

Shri Jangde: I have been doing work of social reform among these 90 per cent. of the people and I know them thoroughly. I know their marriage and divorce customs very well. The people who are speaking on their behalf do not know them. They speak only to place obstructions in the progress of this Bill. It has been said that easy divorce is a very good thing. I want to tell you Sir, that the custom of divorce among the *Shudras* has become so old and useless that it is being highly misused. Today the honour of our mothers and sisters is at stake on account of this. They are sold in Calcutta and Bombay and they embrace other faiths. Today among the *Shudras* a woman does not enjoy even as much respect as a cow does. A cow is sold only once, but women are sold many times. The custom now prevailing among them has become the custom of the high-handed and is no longer the custom of the poor. You say that if this custom is abolished, people will have to incur much expenditure in the Law court, but I cannot help praising the wisdom of Dr. Ambedkar who has suggested the remedy that the decisions of the *Panch* of the caste shall not be binding until the sanction of the Government is obtained. Today what we do is to marry, perform the custom of *Saptpadi*, and to sell her (the wife) after two or three days. People become ready to sell and divorce her. In this case, what is the meaning of sacramental marriage and *Saptpadi*? The old customs have become rotten. You want to maintain them. You want to keep them in the

name of Hindu religion. But I want to tell you that 90 per cent. people of Hindu society are becoming opposed to them. Women are not shown any respect. They are labouring under difficulties. You say that we regard them as *Devis* and *Saubhagya Lakshmi*, but this is all wrongly put by you

Just now some hon. Members said that they did not want divorce for the *Dwijas* and why should they be compelled to adopt it. This is the opinion of many of the hon. Members. You want to place the lion and the cow in the same category. Should the hunter and his prey be placed together? Do you want to unite the East and the West? They can never meet. On the one hand you say that there should be no divorce among the *Dwijas*, on the other. you say that loose divorce should be maintained among the *Shudras*. This anomaly is leading to a fall in our moral and human standards. The Hindu Code has been drafted to remove this extreme kind of discrimination and to bring the *Dwijas* and *Shudras* from Cape Comorin right up to Kashmir together. You want to spread the awakening among the Hindus. I say that the Hindu Code Bill would be a great help in this direction. You do not want to show the same sense of moral values which has been shown by Dr. Ambedkar in drafting this Bill. In this connection I wish to say that if there can be any means of bringing the *Dwijas* and the *Shudras* together, it can only be the Hindu Code Bill. You say that it should be applied only to those who want it, and those who do not want it should not be compelled to adopt it and none should be forced to adopt monogamy and divorce. In my opinion propaganda has been done in the wrong manner in this connection. Government have no money and they do not want to do propaganda in this respect. Not the supporters, but the opponents of the Hindu Code are doing forceful propaganda. Once I heard that Karpatriji said in a speech that it could even make marriage between father and daughter possible. Similarly other false propaganda is being done. It is said that it would lead to marriages between brothers and sisters and that Hindu religion is going to pieces. I say that the diseases which have crept into Hindu religion are being sought to be removed by treatment. This is the aim of the Hindu Code. Such a propoganda is being done in this connection. You say that you do not want divorce. but on the other hand, you want that it should be introduced for us. Among the *Dwijas* a married woman who becomes a widow, cannot be re-married in any case but men can marry a hundred times if they like. This is no justice. Just as Rama married once.....

Mr. Deputy-Speaker: You leave Rama aside.

Shri Bhatt: He should be allowed.

Shri Jangde: I was speaking of the evil custom prevailing among the *Shudras*. We want to change it. Every person can marry five or six women. In no home are women married according to *Saptpadi* are found. They go away with the high-handed persons. By changing their women repeatedly they incur much expenditure. More than half of their property is spent in marrying these women. Is it justice that a woman married to a man should go to another? This Bill in which you see the end of the Hindu religion has been introduced to remove these evils. Therefore, without taking more time I would like to submit that if you want to see the renaissance of the Hindu religion, if you want to maintain it and bring the *Dwijas* and the *Shudras* together, the amendment in respect of Marriage and Divorce clauses of the Hindu Code Bill should be accepted.

श्री टी० ऐन० सिंह : माननीय उपाध्यक्ष महोदय, मैं जान बूझ कर हिन्दी में बोल रहा हूं कारण यह कि अभी हमारे कुछ मेम्बरों ने और विशेषकर श्री ओरांव ने इस हिन्दू कोड बिल पर हिन्दी में बोल कर हम लोगों को भी ऐसा करने की एक प्रकार से आज्ञा दी है ।

इस विशेष क्लाज ४ के बारे में जो इस वक्त बहस शुरू हुई है उस में हम को एक बात का विशेष तौर से ख्याल आता है । हमारे डाक्टर साहब ने अवश्य मनु, पाराशर, याज्ञवल्क्य की परम्परा में आ कर उन का स्थान लेने का प्रयत्न किया है परन्तु मैं समझता हूं कि परम्परा का ही स्थान लेना यह उन की अनधिकार चेष्टा है । क्योंकि जो हमारी परम्परायें हैं वे बराबर काल से, समय से और स्थिति से बनती रहती हैं । वह सामूहिक बुद्धि और अनुभव के आधार पर बनती हैं । इस वास्ते उन पर किसी व्यक्ति विशेष की बुद्धि काम नहीं दे सकती । मेरा कहना सिर्फ यह है कि हम अपनी परम्पराओं की अवहेलना इतनी आसानी से, इतनी साधा-

[श्री टी० ऐन० सिंह]

रणतया, नहीं कर सकते । इन सब परम्पराओं को कदाचित हम जानते भी नहीं । मेरा तो यह दावा है कि डाक्टर साहब, हमारे ला मिनिस्टर, जो इन परम्पराओं को इस हिन्दू कोड के द्वारा समूल नष्ट करना चाहते हैं, वह बता सकते हैं कि हमारे इस विशाल देश में, इस भारत भूमि में, हमारी परम्परायें कितनी हैं । उन का कदाचित् उन्हें ज्ञान भी न हो और फिर जब उन परम्पराओं को वे जानते भी न हों तो यह कहना कि इन को समूल नष्ट होना चाहिये, यह कहां तक ठीक है । इसलिये आप पाराशर या याज्ञवलक्य या अन्य किसी स्मृतिकार के अनुकरण की चेष्टा कर सकते हैं, परन्तु भगवान के लिये इन परम्पराओं पर अनधिकृत चेष्टा न कीजिये ।

माननीय उपाध्यक्ष महोदय, फिर मैं आप से बताता हूं कि हमारे कितने ही भाइयों में, हमारे देश के कोने कोने में कितनी हीं परम्पराऐं चल रही हैं । वह कदाचित् मनु, पाराशर, या अन्य किसी स्मृति से भी ऊंचे आदर्श पर चल रही हैं । क्या आज कोई आदमी यह कह सकता है कि हमारे देश के उस वर्ग में जिस में हमारे श्री थेवले ओरांवजी को होने का गौरव है, उस वर्ग में क्या बहुत सी चीजें, बहुत सी बातें, बहुत सी परम्परायें, बहुत से विधान, हमारे विधान से सर्वथा श्रेष्ठ नहीं हैं ? मेरा तो यह कहना है कि वह डाइवोर्स, (शायद इस के लिये हिन्दी में कोई एक शब्द नहीं मिलेगा) (एक माननीय सदस्य : विवाह विच्छेद), विवाह विच्छेद आप कह सकते हैं, लेकिन वह एक शब्द नहीं हुआ, खैर, उन के यहां इस सम्बन्ध म जो नियम है वह हमारे कोड के नियमों से या विलायत के, इंगलैंड के, अमेरिका के, इन सब जगहों में नियम बने हुए हैं, वहां जो बातें मानी जाती हैं, उन से भी ये कहीं आगे बढ़े हुए हैं । और हमारी समझ में उन को संकुचित करना या यह दम्भ करना कि यह कोड या व्यवस्था उस से श्रेष्ठ है और यह उस की जगह लागू होगी और वह लागू नहीं हो सकेगी, यह हमारी समझ में नहीं होना चाहिये । इस वास्ते मैं अपनी गवर्नमेंट से खास तौर से प्रार्थना करूंगा, अपने ला मिनिस्टर से प्रार्थना करूंगा कि पहले तो जब हम परम्पराओं को जानते ही नहीं तो फिर अनजान में उन सब परम्पराओं के साथ इस तरह व्यवहार करना अनुचित है । दूसरे जब आप की परम्परायें किसी नियम या विधेयक के विरुद्ध नहीं हैं तो उन को समूल नष्ट करना बुद्धिमानी नहीं है । मैं ने सुना है कि किन्हीं विषयों में किन्हीं अंशों में आप परम्परा को स्थान देने जा रहे हैं । उन के बारे में हमारे सामने अभी कोई संशोधन नहीं आये हैं ।

एक माननीय सदस्य : मैरिज (marriage) के बारे में आ गये हैं ।

श्री टी० ऐन० सिंह : लेकिन सब के बारे में नहीं आये हैं, शायद आने वाले हैं । उन का मैं स्वागत करता हूं । लेकिन साथ ही साथ यह कहता हूं कि इस तरह से एक सर्वव्यापी ढंग से, बिल्कुल समूलाच्छेद की दृष्टि से उन के लिये विधान बनाना ठीक नहीं है । इसी वास्ते मेरा खास तौर से इस से विरोध है । अगर आप देखें तो मालूम होगा कि पहले जो क्लाज था और अब जो क्लाज बनाया गया है उस में एक चीज और जोड़ दी गई है और कहा गया है "ऐनी अदर ला इन फोर्स", (any other Law in force) । अर्थात् और भी जो विधान या विधेयक हो जो उस वक्त लागू हो, वह भी हटा दिया जाय, अगर वह इस से इनकानसिस्टेंट (inconsistant) हो, अगर वह असंगत हो, संगत न हो, ऐसी

दशा में वह लागू नहीं होगा। तो मेरा यह कहना है कि क्या यह ठीक नहीं होता कि आप इन परम्पराओं के बारे में भी यह कहते कि इनकान्सिस्टेंट होने वाली बात नहीं लागू होगी। या यह कहते कि इस के जो सिद्धान्त हैं, इस का जो मूल उद्देश्य है, उस के विरोध में अगर कोई कस्टम या परम्परा है तो वह लागू न हो। ऐसा होता तो वह बात समझ में आती। लेकिन यह कह देना कि कोई भी परम्परा हमारे लिये लागू ही नहीं होगी, यह ठीक नहीं है और मैं समझता हूं कि इस के बारे में काफी ध्यान पूर्वक इस को बदलना है और इस में संशोधन करना आवश्यक है।

यह मैं ज़रूर मानता हूं कि बहुत सी हमारी परम्परायें ग़लत हो गई हैं, वे समयानुकूल नहीं हैं, यह हो सकता है। शायद एक परम्परा चली आ रही है जिस के अनुसार एक वयोवृद्ध, ६० ,७० वर्ष की आयु वाला भी शादी कर लेता है। ऐसी भी परम्परा है। लेकिन खेद है हिन्दू कोड के अनुसार यह असंगत नहीं है। मेरा यह कहना है कि अगर परम्परा पर आप को कुठाराघात करना है तो आप ऐसी परम्पराओं पर कीजिये।

श्री ए० सी० शुक्ला : दहेज के बारे में।

श्री टी० ऐन० सिंह : जी हां, और बहुत सी बातें हैं जिन के ऊपर आप कुठाराघात कीजिये विधवा विवाह है, आदि कई बाते हैं। आप ने इन के बारे में भी पचासों किस्म के कानून बनायें, बहुत सी बातें कीं, लेकिन क्या उन से हम को सफलता मिली। इस वास्ते मेरा यह कहना है कि आप को हर एक परम्परा का अच्छी तरह से अध्ययन करना चाहिये, यह नहीं कि जिस तरह से आप ने यह किया कि सब को हटा दिया। इस से मेरा विरोध है। मेरा यह कहना नहीं है कि हमारी कोई परम्परा गलत नहीं है।

श्री ए० सी० शुक्ला : क्या मैं एक प्रश्न आप से पूछ सकता हूं ? आप किस तरह निश्चय करेंगे कि यह परम्परा गलत है या अच्छी ? एक जाति के ७५ प्रति सैंकड़ा एक कस्टम (Custom) को चलाना चाहते हैं तो उस को माना जाय ? आप यह बताइये कि कस्टमरी ला (Customary Law), जैसे हमारे जांगड़े जी साहब ने कहा, इस में सुधार होना चाहिये। सुधार तो सभी चाहते हैं। सभी कुरीतियों का सुधार चाहते हैं। इस लिये आप बताइये कि इस का निश्चय कैसे हो।

श्री टी० ऐन० सिंह : यह प्रश्न जो हमारे माननीय शुक्ल जी ने किया है वह बहुत साधरण है। परम्परा का सुधार हम या आप थोड़े करते हैं, सारा समाज, समूह करता है, काल करता है, और यह कभी नहीं कहा जा सकता कि सब परम्परायें अपरिवर्तित रही हैं। सब का परिवर्तन हुआ है। लेकिन मेरा यह कहना है कि जब हम सामूहिक बुद्धि के विपरीत अपनी व्यक्तिगत बुद्धि लगाते हैं तो उस वक्त हमारा कर्तव्य हो जाता है कि उस का पूर्ण रूप से अध्ययन करें। मुझे तो कुल यही कहना है। मैं यह नहीं कहता कि कोई परम्परा नहीं बदलनी चाहिये। लेकिन उन्हें हमें अपनी सामूहिक बुद्धि से बदलना है। इस तरह से हमें बदलने का अधिकार तो है, किसी कानून के ज़रिये नहीं बदलना चाहिये। मेरा केवल यही कहना है।

श्री ए० सी० शुक्ला : किस तरह ?

श्री टी० ऐन० सिंह : बहुत सी परम्परायें जिन्हें आप बुरा समझते हैं वे लोकमत पैदा करने से बदलती हैं । और बहुत सी परम्परायें ऐसी होती हैं जो कि समय के प्रभाव से बदलती रहती हैं । कहा जाता है कि एक जमाने में स्पार्टा में कोई बच्चा पैदा होता था तो उस को बाहर फेंक देते थे । यदि वह रात और दिन भर जीवित रह जाता था तो उस को फिर वापस ले आते थे और उस को जीवन दान मिलता था । यह ठीक है । इस परम्परा के पीछे उस समय की एक विशेष आवश्यकता थी । यह आवश्यकतायें समय से परिवर्तित होती जाती हैं, समाज की जरूरतें बदलती रहती हैं ।

Dr. Ambedkar: You are arguing a bad case.

श्री टी० ऐन० सिंह : मेरी समझ में आप की यह बात नहीं आती । जब मैं समझता हूं कि आप यह अनधिकृत चेष्टा कर रहे हैं तो मुमकिन है कि आप यह समझें कि मैं एक अनुचित केस का समर्थन कर रहा हूं । लेकिन बात यह है कि जब आप अपनी परम्पराओं का पूरा ज्ञान ही नहीं रखते और उस के बाद उन में तरमीम करें और ऐसी परम्पराओं में जो कि बहुत ही अच्छी हैं, चाहे वह इस कोड से सस्टेन (sustain) हों या न हों . . .

श्री ए० सी० शुक्ला : क्या वे रेकार्डेड (recorded) हैं ?

श्री टी० ऐन० सिंह : हमें मालूम है, हम को उन का ज्ञान है । इस देश में हम रहते हैं और हम को इन का ज्ञान है । इस लिये जब आप उन अच्छी परम्पराओं पर भी कुठाराघात कर रहे हैं तो यह अनुचित है और इसी वास्ते मैं चाहूंगा कि या तो इस क्लाज को बिल्कुल हटा दिया जाय या फिर इस के आगे जो बाद में आप लाने वाले हैं उस की व्यवस्था की जाय तो फिर इस पर विचार किया जाय । यह उचित होगा । अभी इस रूप में इस को पास करना उचित नहीं है ।

(English translation of the above speech)

Shri T. N. Singh: Sir, I am deliberately speaking in Hindi, because some of the hon. Members and particularly Shri Oraon, by speaking on the Hindu Code Bill in Hindi, have in a way asked us to do the same. We have one thing specially in mind while discussing this particular clause 4. Dr. Ambedkar has certainly tried to take a place in the galaxy of Manu, Parasher and Yajnavalkya by following in their footsteps, but I believe that it is an unjustified effort on his part because our traditions have gradually evolved according to the dictates of time and circumstances. They are formed on the basis of collective wisdom and experience. Therefore the wisdom of any particular individual cannot affect them. What I mean to say is that we cannot violate our traditions so simply and so easily. We perhaps do not even know all of these traditions. I would challenge Dr. Ambedkar, our Minister of Law, to state how many traditions of ours, which he wants to destroy completely through this Hindu Code, are there in this vast country of ours, in this Bharatvarsh. How far is it proper for him to say that these traditions which he perhaps does not know of, should be completely destroyed? Therefore you can make efforts to follow Parashar or Yajnavalkya or any other lawgiver (*Smritikar*) but, for God's sake, do not make this wanton assault on these traditions.

Sir, I would like to tell you that a good many traditions are being followed by innumerable people in every corner of our country. They are perhaps being followed on a higher level of morality than what was obtained by Manu, Parashar or any other *Smritikar*. Can anybody today say that in that section of our country to which our Shri Theble Oraon has the honour of belonging, many things, many traditions, many laws are not such as are highly superior to our laws? In my view this divorce (perhaps there is no one word for it in Hindi). (*An Hon. Member: Vivah-Vichheda.*) You may say *Vivah vichheda*, but it is not one word anyway the rules in force therein this regard are far superior to the rules in our Code or rules found anywhere, in England, in America or else-

where. In our opinion it is not proper to curtail them or to boast that this Code or this measure is better and should replace them. Therefore I would appeal to our Government, to our hon. Minister of Law that it is improper for us, being ignorant of the traditions, to deal with all these traditions in this manner. Secondly, it is not wise to destroy completely these traditions and specially when they do not go against any rule or Bill. I have heard that in some cases in some parts, these customs and traditions are being given their due place. But no amendments have come before us in regard to them.

An Hon. Member: Amendments regarding marriage have come.

Shri T. N. Singh: But amendments regarding other things have not come, perhaps they are about to come. I welcome them. But at the same time I would submit that it is not correct to make laws for them in a sweeping manner with a view to eradicate them. That is why I oppose this measure particularly. If you were to read this clause, it will be found that the words 'any other laws in force' have been added to the clause now framed i.e. any other law or Act which is inconsistent with it would also be repealed and would not be applicable in that case. Would it not be proper if you also said in regard to these traditions that the inconsistent things would not be applied and any custom or tradition going against any of its principles or basic aims would not be applicable. If so, it would have been understandable. But to say that no tradition would apply is not fair and I believe that it is essential to change or amend it carefully. I do agree that many of our traditions are inconsistent and are perhaps not according to the times. According to some of the current traditions, an aged man of 60 or 70 can also marry. But it is regretted that this is not incongruous with the Hindu Code. What I mean to say is that if you have to axe any tradition, axe such traditions.

Shri A. C. Shukla: Those regarding dowry.

Shri T. N. Singh: Yes, there are many others, like widow re-marriage etc. You made scores of laws regarding them and did many things, but did we succeed through them? That is why I say that every tradition should be thoroughly studied. I am opposed to removing all of them. I do not mean that none of our traditions is wrong.

Shri A. C. Shukla: May I ask a question? How will you determine that a particular tradition is good or bad? If 75 per cent. people of a community want a custom to be retained, should their view be accepted, and should the customary law, as stated by Shri Jangde, be reformed? Everybody wants reform of the bad customs. Therefore, let us know how it should be determined.

Shri T. N. Singh: The question put by Shri Shukla is very simple. It is not you or I who reform the traditions. It is done by the whole society, the whole community, according to the dictates of the time and it can never be said that all traditions have remained unchanged. All of them have undergone changes. But I say that when we apply our individual judgment as against our collective wisdom, it becomes our duty to study them fully. That is all I have to say. I do not say that no customs should be changed, but we should change them with our collective wisdom. We have the right to do so in this manner, but we should not do it through legislation. This is what I want to say.

Shri A. C. Shukla: How?

Shri T. N. Singh: Many of the traditions which you regard as bad get changed by the pressure of public opinion. Many others change according to the dictates of time. It is said that at one time when a child was born in Sparta, it was thrown away. If it could survive one day and one night, it was brought back and given a lease of life. This is correct. There was a special necessity for that tradition at that time. These traditions change with the times as the needs of society change.

Dr. Ambedkar: You are arguing a bad case.

Shri T. N. Singh: I do not understand this. When I believe that you are making a vain effort, you might think that I am supporting a bad case. The thing is that you do not have full knowledge of our traditions. Only after studying them completely you might change them and those traditions which are very good, whether they are sustained by this Code or not should.....

Shri A. C. Shukla: Are they recorded?

Shri T. N. Singh: We live in this country and know them. It is, therefore, improper to axe these good traditions and I would like that either this clause should be removed altogether or it should be adjusted in the next clause. It should be considered after that. That would be proper. To pass it just now in this form is not proper.

चौधरी रनबीर सिंह : मैं पंडित ठाकुर दास भार्गव का जो संशोधन नम्बर ४२० है और भट्ट जी का संशोधन नम्बर २८८ है, उन का समर्थन करने के लिये खड़ा हुआ हूं। भट्ट जी का तो अपने संशोधन से आशय यह है कि जो रीति रिवाज या कस्टम्स (Customs) हैं वह अगर कहीं आप के इस हिन्दू कोड बिल से टक्कर खाते हैं, तो उस टक्कर को एक दम से यह नहीं मान लेना चाहिये कि कस्टम खत्म हुआ, बल्कि दस साल तक उसे जीवन दे दिया जाय और दस साल के बाद उसे खत्म मान लेना चाहिये। पंडित ठाकुर दास भार्गव के संशोधन नम्बर ४२० का यह आशय है कि जितने भी कस्टम्स हों, जो हिन्दू कोड बिल के मुताबिक हों, उन को खत्म मान लेना चाहिये और जो कस्टम्स उन के अलावा बाक़ी रहते हैं उन की ताक़त को, या उन की क़ानूनी ताक़त को ज़िन्दा रहने दिया जाय। मेरे लायक़ दोस्त पांडे जी ने जिस तरह से कहा, मैं मानता हूं और यह बात सही है और वह बड़ी संतोष दिलाने वाली बात है कि हिन्दू कोड बिल का जो असली आशय था वह यह समझा जाता था कि यह हिन्दू कोड बिल देश के अन्दर कुछ सुधार करने के लिये या सामाजिक कुरीतियों को दूर करने के लिये उनमें तबदीली करने के लिये लाया जा रहा है। इस बिल का असर कितने आदमियों के ऊपर पड़े यह भी सोचने वाली बात है और जैसा कि उन्हों ने कहा मैं तो इसे अनाधिकार चेष्टा मानता हूं कि इस तरह बैक डोर (back door) से इस देश के उन आदमियों पर जिन पर हिन्दू कोड बिल अभी तक लागू नहीं है उन को जबरदस्ती इस में फांसा जा रहा है।

श्री ए० सी० शुक्ल : अगर वह न चाहें तब भी लें।

चौधरी रनबीर सिंह : शुक्ल जी मेरे ज़बरदस्ती कहने का मतलब नहीं समझे, या उन्हों ने सुना नहीं। अगर वह यह कहते कि ज़बरदस्ती में जो कहता हूं, वह ग़लत है, तो मैं उन को शायद जवाब देता कि वह कोई सबूत दें कि पंजाब के किसी भाई ने आज तक चाहे वह हिन्दू जाति का रहा हो, सिक्ख जाति का रहा हो, या मुसलमान जाति का हो, एक आदमी ने भी कभी इस आवाज़ को बुलन्द किया हो कि हमारा जो कस्टमरी क़ानून है उस को हटा दिया जाय, और उस की जगह हमें मनु का क़ानून, या याज्ञवल्क्य या और किसी का क़ानून हमें दीजिये ?

श्री ए० सी० शुक्ला : पढ़ लिख जायेंगे तो उसके लिये मांग करेंगे।

चौधरी रनबीर सिंह : हमारे माननीय शुक्ल जी को मालूम नहीं है कि हमारे पंजाब प्रान्त में कैसे डाइनिमिक (dynamic) आदमी हुए हैं जिन्होंने देश की ताक़त को चैलेंज (challenge) किया है, गोकि मैं उन का समर्थक नहीं, लेकिन यह इतिहास की सच्चाई है कि पिछले सालों के अन्दर हिन्दू मैजारिटी एरियाज़ (Hindu Majority areas) के अन्दर कोई कांग्रेस के आदमी को हरा नहीं सका। लेकिन पंजाब का ऐसा इलाक़ा था हरियाना का जो हिन्दू मैजारिटी एरिया था वहां चौधरी छोटू राम ने कांग्रेस के उम्मीदवार को हरा दिया था।

Dr. Ambedkar: Ch. Chottu Ram was a great friend of Hindus.

चौधरी रनबीर सिंह : मैं डाक्टर अम्बेडकर साहब से उन का अगर कोई लेख हो, उन की कोई बात उन के सबूत में हो, तो मैं मानने के लिये तैयार हूं। बाक़ी जहां तक उन के आशय का वास्ता है, उस से तो मैं विरुद्ध नहीं हूं, मैं मोनोगैमी (monogamy) का हामी हूं और चाहता हूं कि किन्हीं विशेष परिस्थितियों में डाइवोर्स (Divorce) की व्यवस्था भी अवश्य रहनी चाहिये ताकि ऐसी

अवस्था में, जब स्त्री, पुरुष दोनों तरफ एक साथ रहने से तक़लीफ़ होती है तो उन्हें उस तक़लीफ़ से बचाने के लिये कोई न कोई ढंग या रास्ता निकालना चाहिये । लेकिन इस के साथ साथ मैं यह कहे बग़ैर नहीं रह सकता कि यह जो चेष्टा है, यह अनाधिकार चेष्टा है, क्यों कि हिन्दू कोड बिल से हमारा आशय होना चाहिये था कि हिन्दू कोड बिल से जो गवर्न (govern) होते हैं उन्हीं पर यह लागू किया जाय ।

यह मेरी बदक़िस्मती है कि जब से यह हिन्दू कोड बिल का सवाल आया, कई महीनों से चला आता है और कई दिन इसके ऊपर लगाये गये, मैंने उस वक़्त बहुत कोशिश की कि मैं पांच मिनट मिलें तो कुछ उस पर अपने विचार प्रकट करूं, लेकिन मौक़ा नहीं मिला । यह बदक़िस्मती की बात है कि हमारे मान साहब जो बोले तो वह सिक्ख धर्म में फंस गये, बजाय इस के कि सही बात पर आते, लेकिन उन्हों ने शायद ऐसा समझा कि इस तरह उन की बात ज़ोरदार हो जाय या और कोई कारण रहा होगा । बहरहाल मैं समझता हूं कि यह सिक्ख धर्म का प्रश्न नहीं है, यह पंजाब प्रान्त भर के कस्टमरी क़ानून का प्रश्न है और डाक्टर साहब से मैं निवेदन करना चाहता हूं कि देश के अन्दर एक ऐसे वक़्त में जब कि ब्राह्मनिक क़ायदे क़ानूनों ने सारे देश और समाज के रहनसहन और रीति रिवाजों को अपने पंजे में बांध रखा था कि सोमवार को नहीं जा सकते, मंगलवार को नहीं जा सकते, और शनिवार को नहीं जा सकते, ऐसे समय में मैं डाक्टर साहब को बतलाना चाहता हूं कि पंजाब की वह लड़ने वाली जाट जाति ने, जिस जाति से मैं और सरदार बलदेव सिंह ताल्लुक़ रखते हैं, उस जाट जाति ने आज तक उस ब्राह्मनिक रूल के सामने सिर नहीं झुकाया । मैं निवेदन करना चाहता हूं कि आप की जो यह दो चीज़ें मोनोगैमी और डाइवोर्स हैं, उन के लिये वास्तव में हमारे समाज में कोई ज़्यादा विरोध भी नहीं है और मेरा भी इन दोनों से कोई विरोध नहीं है, लेकिन जो आप का यह ढंग है और तरीक़ा है उस से ज़रूर विरोध है । और आज जिस तरीक़े से जिस बैक डोर से यह बढ़ा है वह कोई बहुत अच्छा ढंग नहीं है, यह बात नहीं है कि मैं अपने आपको ग़ैर हिन्दू मानता हूं, लेकिन यह ज़रूर मानता हूं और यह सच बात है कि हम लोग कभी हिन्दू कोड से गवर्न नहीं हुए, वह हमारे ऊपर कभी लागू नहीं हुआ । आप का यह ख़्याल कि जिन लोगों को आप अभी तक दिमाग़ी तौर पर गुलाम नहीं कर पाये थे, उन को आप यह समझते हैं कि बैक डोर से गुलाम कर लेंगे, तो मुझे इस में पूरा शक़ है । यह जो आप शादी, विच्छेद के बारे में रीति रिवाज के ऊपर क़ायदे क़ानून बनाने जा रहे हैं, इस में भी हमें बहुत कुछ मतभेद है । इस सिलसिले में मैं एक बात बतलाना चाहता हूं कि हिन्दुस्तान के हिन्दू समाज के अन्दर विधवा के प्रति दर्द के नाम पर बहुत सारे समाज सुधारकों ने उस दिशा में बड़ी उन्नतियां की हैं, लेकिन मैं कहना चाहता हूं कि बदक़िस्मती से हमारे समाज के अन्दर सदा से नौजवान विधवा अननोन (unknown) रही हैं । हमारे समाज के अन्दर नौजवान विधवा का नाम नहीं होता ।

क्योंकि हमारे यहां यह रिवाज है कि जिस समय किसी बहिन का पति मर जाता है तो उस के पति के मरने के एक साल बाद दोनों तरफ के भाई, जो उस बहिन के बाल्देन और भाई होते हैं वह भी इकट्ठा होते हैं और जो भाई मर जाता है उसकी तरफ के लोग भी यानी उनके बाल्देन और भाई भी इकट्ठा होते हैं और वहां पर यह फैसला किया जाता है कि चाहे उस बहन को थोड़ी बहुत शर्म आती हो,

[चौधरीरनबीर सिह]

जैसा हिन्दू समाज में सारी जगहों पर होता है वैसे ही हमारे यहां भी थोड़ी शर्म होती है, तो अगर वह इन्कार कर दे और कह दे कि जो दुःख भगवान ने मुझे दिया है, वह दुःख मैं ही काटूंगी, लेकिन उस की बनावटी इच्छा के विरुद्ध भी उसे मजबूर किया जाता था कि यह मुमकिन नहीं है। यह कहा जा सकता है कि उस का आदर्श अच्छा है लेकिन कितने आदमी हैं जो इतने ऊंचे आदर्श पर चल सकते हैं । इसके ऊपर हमारे समाज में शक है कि आप इस समाज के अन्दर यह बहुत ऊंचा आदर्श कायम करने जा रहे हैं, इस से हमारे समाज में कहीं खराबी न पैदा हो, इस लिये इस तकलीफ को, आप इसे तकलीफ मानें या जो भी मानें, इस बात को मान लिया जाय कि जो कपड़ा हम डालते हैं, यानी हम किसी के सुपुर्द करते हैं, विवाह करते हैं आसान तरीके से, उस का नाश न किया जाय । तो इस लिये मैं भट्ट साहब की बातकी ताईद करना चाहता था। अब मैं इस के कारण की तरफ आ रहा हूं ।

एक तरफ तो जहां आप का कायदा कानून है, कि बहनों की परेशानियों को हल्का किया जाय, और जिन्हें बहुत हद तक हल्का किया भी, वहां हमारी बहनों की परेशानियों को और भी तकलीफ-देह बनाया गया है। और वह इसलिये कि आप ने उन को एक तरफ से हक़ दे दिया कि वह जहां चाहें शादी कर लें । वैसे भी यह होगा कि अगर कोई गड़बड़ी न पड़े तो आसानी से रिवाज पड़ जायगा कि वह दूसरी जगह शादी कर सके, लेकिन आप इस को क्यों डालते हैं । जो लोग बाइगेमस (bigamous) होते हैं तो उन की मर्जी से नहीं होता बल्कि फोर्स्ड सर्कम्स्टान्सेज (Forced circumstances) से होता है । जो भाई मर जाता है उस के दूसरे भाई को अपनी इच्छा के विरुद्ध भी बाइगेमी के रिवाज को मानना पड़ता है ।

श्रीमती दीक्षित : मैं आप से एक बात पूछना चाहती हूं कि क्या यह चीज़ सही है कि एक स्त्री है, उस के चार छः बच्चे हैं, उस की भावज है, उस के चार छः बच्चे हैं, उन सब को इकट्ठा कर दिया जाय तो जौर सौतपन रहता है उस से उन में संघर्ष नहीं होता और क्या यह सिद्धान्त अन्याय नहीं है कि एक स्त्री को उस की इच्छा के विरुद्ध भी मजबूर किया जाय कि वह दूसरे आदमी से शादी करे ?

सरदार हुक्म सिंह : भगवान की इच्छा से ।

चौधरी रनबीर सिंह : रिमैरिज (remarriage) से आप का मतलब है तो म कहूंगा कि नहीं रिमैरिज भी तभी हो सकती है जिसे ज़ाल्ले में समाज करे, लेकिन बहुत सी बहिनें ऐसी होती हैं जो इसे ज़ाहिर नहीं कर सकतीं । स्त्री को मरे जहां १३ या १४ दिन हुए, आदमी यह ज़ाहिर कर देता है लेकिन बहिनें ऐसा नहीं कर सकतीं क्यों कि जैसा हमारा समाज बना है उस में ऐसा हो ही नहीं सकता । और उसे बदलने के लिये काफी वक्त चाहिये था । लेकिन अगर उन की मंशा यह थी कि एक भाई है, उस के दो तीन बच्च हैं, एक उस की बीवी है, दूसरा भाई मरने वाला है, उस के भी दो तीन बच्चे हैं, बीवी है, अगर उन लोगों को इकट्ठा कर दिया जायगा तो उस से मुश्किल होगी, दिक्कत होगी, अगर वह यह पूछना चाहती हैं तो मैं इस की तरफ भी आ रहा हूं । मैं मानता हूं और हमारे समाज में हर एक आदमी मानता है कि कोई आदमी राज़ी से बाइगैमी नहीं करता,

और वह बहिन भी मजबूर होती है क्योंकि एक तरफ़ तो उसे बच्चों का प्यार है, वह उनको छोड़ नहीं सकती, दो तीन बच्चे हैं, आखिर कहां जायें । वह यह भी नहीं कह सकती कि मेरी रिमैरिज करने की इच्छा है, और घर के दूसरे लोग भी उन बच्चों को छोड़ नहीं सकते, तो सवाल यह पैदा होता है कि वह अपने बच्चों को अपने साथ ले जाये। लेकिन यह हमारे समाज का रिवाज है, और मेरी समझ में आप कोई भी कानून बनायें, आप इसे नहीं बदल सकते । यह कोई दिल्लगी की चीज़ नहीं है । वह स्वयं इस को बदल सकते हैं, लेकिन आप खुद आज इस को नहीं बदल सकते ।

हमारे यहां एक और प्रथा है, यह अपना विश्वास है कि एक खानदान जिस के बच्चे हैं, उस का नालायक से नालायक आदमी भी अपने बच्चों को दूसरे खानदान में नहीं जाने देता है। और इस के विपरीत कोई आदमी इस की चेष्टा भी करे तो उस की सज़ा हमारे यहां बड़ी कड़ी है आज भी । चाहे आप कह लीजिये कि हमारा समाज पिछड़ा हुआ है और उस का सुधारना भी बड़ी दिक़्क़त का काम है, लेकिन इस तरह की बात का नतीजा हमारे यहां अब भी क़त्ल है । तो अगर आप यह चाहते हैं कि हमारे समाज के अन्दर क़त्ल व ग़ारत की तादाद ज़्यादा बढ़े, पहले से ही पंजाब क़त्ल व ग़ारत के लिये ज़्यादा बदनाम है, वहां काफ़ी आदमी इस तरह के क़त्ल के सिलसिले में फांसी चढ़ते हैं, तो अगर आप उन की तादाद बढ़ाना चाहते हैं तो बेशक एक दम से जो क़ायदा कानून चाहे लागू कर दें और अगर आप चाहते हैं कि ऐसे क़त्ल व ग़ारत और फांसी की सज़ाओं में कुछ कमी हो तो मैं आप से प्रार्थना करूंगा कि आप भट्ट जी साहब का या भार्गव जी का जो संशोधन है उस को मान लें ।

तो मैं इस बात को बता रहा था कि इस के अन्दर क्या है कि वह बहन या तो इस बात पर मजबूर होगी कि तमाम उम्र विधवा बनी रहे, जैसा कि उस के समाज में अब से पहिले कभी नहीं था, अगर उसे अपने बच्चों से प्यार है, और अगर बच्चों से प्यार नहीं है तो अपने बच्चों को चोरी छिपा कर रात को उठा कर कहीं ले जाये । और अगर कोई हिम्मत वाला शख्स मिल गया और उस ने कहा कि चलो मेरे साथ मैं देख लूंगा दूसरों को, तो उस का नतीजा क्या होगा कि वह दुबारा विधवा होगी, या उस का मर्द फांसी पर चढ़ेगा । किसी सूरत में उस का सौभाग्य क़ायम नहीं रह सकता । यह वैसे तो काफ़ी बड़ी बात है, और डरावनी बात है, लेकिन एक सच्ची बात है ।

इस के बाद सगोत्र विवाह की बात है । कितने भाई हैं और कितनी बहिनें हैं जो शहरों में रहती हैं । मैं बताना चाहता हूं कि मेरा इस हिन्दू कोड बिल पर क्या रिऐक्शन (reaction) है । इस हाउस के अन्दर तो बहुत से भाई हैं, उन में से बहुत बड़ी तादाद उन लोगों की है जो शहरों में रहते हैं । जो शहरों में जन्मे, शहरों में पले और शहरों के क़ायदे क़ानून और तरीकों तक ही उन के ख्यालात महदूद हैं। उन के ख्याल से शहर की ज़िन्दगी में और देहात की ज़िन्दगी में कोई अन्तर नहीं है, इस का उन्हें कोई अन्दाज़ा नहीं है । मैं तो एक मामूली सी मिसाल देता हूं । एक शहर को लीजिये, वहां अगर कोई बहिन शादी नहीं करना चाहती तो कोई आपत्ति उस के ऊपर नहीं है कि तुम शादी क्यों नहीं करती । लेकिन अगर देहात में

[चौधरी रनबीर सिंह]

कोई लड़की १६ साल के ऊपर चली जाती है तो जहां उस के वाल्देन पर विपत्ति आ जाती है वहां उस बहिन पर भी आपत्ति आ जाती है। हर एक आदमी उस के पास आता है और पूछता है कि तुम इस लड़की को क्यों बाहर नहीं भेजते। उस लड़की की कितनी ही इच्छा क्यों न हो कि वह शादी न करे लेकिन वह शादी कराये बग़ैर नहीं रह सकती। उस को मजबूर किया जाता है, यह थ्योरी अच्छी भी हो सकती है, बुरी भी, लेकिन एक सच्चाई है। इस से आप अन्दाजा लगा सकते हैं कि शहर की तरबियत और देहात की तरबियत के अन्दर कितना फ़र्क़ है और दोनों के लिये एक क़ायदा और क़ानून बनाना चाहते हैं। मेरे लायक दोस्त जांगड़े साहब बड़े ज़ोर से बोले। उन्हों ने दूसरों के लिये कहा। मैं कहता हूं कि मुझे शक है कि जांगड़े साहब शहर वाले बन गये हैं उन की तरफ़ चले गये हैं। अब वह शहर की बात समझने लगे हैं। वह अपनी बात कहना चाहते हैं, अपनी जगह वालों की नहीं। तो मैं आप से अर्ज़ कर रहा था कि जब तरबियत में इतना फ़र्क़ है, उन की सामाजिक नीति में आपस में इतना मतभेद है, उन के लिये एक क़ायदा और क़ानून बनाना चाहते हैं और कहते हैं कि उन की रीति रिवाजों में कोई अन्तर रखना कोई माने नहीं रखता, यह उन के साथ बड़ा भारी अन्याय है।

एक चीज़ और इस सिलसिले में मैं कहना चाहता हूं और वह है सगोत्र विवाह के बारे में। हमारी बहुत सारी बहिनों की दिल्ली की दिल्ली में ही शादी होती है। एक गली से दूसरी गली में उन का विवाह हो जाता है। छोटे छोटे शहरों में जिन की आबादी दस हज़ार की होती है उन में भी उन का विवाह एक घर से दूसरे घर में हो जाता है। उन को यह पता नहीं है कि हमारे यहां शादी का क़ायदा क्या है। हमारे यहां शादी के लिये कम से कम १५, २०, ५०, और सौ मील का फ़र्क़ होता है। अगर अपनी जाति में मैं अपने लड़के की शादी करना चाहूं तो अपने समाज के आज के रिवाज के मुताबिक मैं अपनी उपजाति में, जो कि २४ गांवों में और १० मील के रेडियस (radius) में रहती है, उस की शादी नहीं कर सकता। मैं उन २४ गांवों में से किसी गांव में अपने लड़के की शादी नहीं कर सकता। यही नहीं। उस के बाद फिर उस की जो मां है उस की उपजाति के जो तीस चालीस गांव हैं उन में भी उस की शादी नहीं हो सकती। उस के बाद आप आगे चलिये जो मेरी मां है उन की उप जाति के जो तीस चालीस गांव हैं उन में भी उस की शादी नहीं हो सकती। इस तरह से आस पास के कोई सौ पचास गांवों में हम शादी नहीं कर सकते।

श्री ए० सी० शुक्ला : यह अच्छी बात है या खराब बात है ?

चौधरी रनबीर सिंह। मैं ने यह दावा नहीं किया। मैं आप को नाराज़ भी नहीं करना चाहता जैसा कि डाक्टर साहब ने कर दिया। मेरी यहां डाक्टर साहब की सी हिम्मत नहीं है कि मैं कड़वी बात सुना सकूं। वह बड़े हैं और मैं तो एक छोटा सा मेम्बर हूं।

श्री राधेलाल व्यास। आप भी तो जाट हैं।

चौधरी रनबीर सिंह : मैं जाट तो हूं लेकिन मैं सरदार भूपेन्द्र सिंह मान जैसा, सिख जाट नहीं हूं। तो मैं आप को कड़वी

वातें नहीं सुनाना चाहता और इसी लिये मैं यह नहीं कहना चाहता कि मेरा कस्टम अच्छा या आप का अच्छा या यह कानून अच्छा। जो मैं आप के सामने रखना चाहता हूं वह आज के हालात हैं और वही मैं आप को बता रहा था कि सौ या १२० गांव छोड़ कर मुझे अपने बच्चे की शादी करनी होगी। तो उन बहिनों को जो छोटे छोटे कस्बों या बड़े शहरों में रहती हैं और जिन का विवाह एक गली से दूसरी गली में हो जाता है उन को क्या मालूम कि हमारे सामने क्या मसले हैं और हमारी क्या मुश्किलात हैं ।

पंडित ठाकुर दास भार्गव : इस मामले में हिन्दू ला में और आप के ला में कोई फ़र्क नहीं है ।

चौधरी रनबीर सिंह : फ़र्क न हो लेकिन डेवेलपमेंट (development) में फ़र्क है। तो आज भी, जैसा कि मैं ने आप को बतलाया, हम इतने गोत्र छोड़ कर शादी करते हैं और आज किसी की हिम्मत नहीं है कि इस के विरुद्ध कर सके। तो कोई नालायक़ से नालायक़ आदमी—जिसे आज के समाज के अनुसार नालायक़ ही कहेंगे हो सकता है कि कल के मुताबिक़ उसे उन्नत कहा जाय—भी ऐसा नहीं कर सकता । किसी की ऐसा करने की हिम्मत नहीं हो सकती। लेकिन आज आप उसे इस कानून में अधिकार देते हैं ?

श्री ए० सी० शुक्ला : आप क्या चाहते हैं ?

चौधरी रनबीर सिंह : मैं शुक्ल जी को यह बतलाना नहीं चाहता कि मैं क्या चाहता हूं। मैं तो यह बतलाना चाहता हूं कि हालात क्या हैं। इसी लिये मैं कहता हूं कि भट्ट साहब का अमेंडमेंट मान लीजिये और हम को दस साल का मौका बदलने के लिये दे दीजिये । अगर हमारी बात ठीक होगी तो आप बदल जायेंगे और आप की बात ठीक होगी तो हम बदल जायेंगे। इसी लिये मैं उन की तरमीम की ताईद करता हूं ।

तो मैं आप से बता रहा था कि सगोत्र विवाह आज भी हमारे समाज में नहीं हो रहा है। लेकिन क़ायदे और क़ानून की बड़ी ताकत होती है। शायद कोई हिम्मतवर निकले और इस क़ानून का सहारा ले कर अगर उसी गांव में ही शादी करना चाहे या उस गोत्र में शादी करना चाहे तो उस का क्या नतीजा होगा ? उस का भी वही नतीजा होगा जो कि मैं ने पहिले बताया। मैं इस चीज को बहुत ऐग्रेवेट (aggravate) नहीं करना चाहता लेकिन मैं आप को यह सच्चाई बतलाना चाहता हूं कि आज के हमारे समाज में यह तनज़्ज़ुली है कि अगर मेरे खानदान में किसी ने ऐसी शादी कर ली तो यह कोई नहीं पूछेगा कि मेरे क्या विचार हैं। अगर मेरा भाई कोई इस क़िस्म की ग़लती करता है तो हो सकता है कि मुझे भी कोई क़त्ल कर दे यह समझ कर कि यह उस का भाई है, चाहे मेरे विचार उस के विरोध में हों या उस के पक्ष में। इस बात को कोई नहीं पूछेगा। हमारे समाज की यही हालत है । वहां तो यह देखा जाता है कि एक भाई क्या करता है और समझ लिया जाता है कि दूसरा भाई भी उस के साथ है। यहां पर एक भाई कम्युनिस्ट (Communist) हो सकता है, दूसरा सोशलिस्ट (socialist) हो सकता है और तीसरा कांग्रेसाइट (Congressite) हो सकता है । एक लड़का किसी का भारत जन संघ का मैम्बर हो सकता है और उस का दूसरा भाई दूसरी पार्टी का हो सकता है। और

[चौधरी रनबीर सिंह]

धर्म में भी अदल बदल हो सकती है। लेकिन हमारे यहां यह बात अभी तक बनी हुई है कि अगर किसी खानदान में एक आदमी कांग्रेसी हो गया तो वह सारा कुनबा कांग्रेसी समझा जायगा चाहे वह हो या नहीं। तो इस किस्म की हमारे समाज में हालत है। आप उसे जो कुछ कहें उन्नति कहें या तनज्जुली कहें। तो इन हालात में मेरी आप से यही प्रार्थना है कि मैं इस बात के हक़ में हूं कि मानोगैमी समाज के लिए बहुत अच्छी है और हिन्दुस्तान जैसे देश में और खास तौर पर जिस बिरादरी का मैं हूं उस के लिये अर्थात् जाटों के लिये तो यह वैसे भी ज़रूरी है क्योंकि हमारे यहां लड़कियां थोड़ी हैं और लड़के ज्यादा हैं। तो अगर कोई भाई दो विवाह कर लेगा तो किसी का हिस्सा कम हो जायगा। अगर मानोगैमी रहेगी तो कुछ ज्यादा भाइयों की शादी हो जायेगी। शायद इस देश में कुछ हिस्से ऐसे हों जहां भाइयों से बहिनें कुछ ज्यादा हों।

सरदार बी० एस० मान : मद्रास में।

चौधरी रनबीर सिंह : तो हमारे यहां का हिन्दू जाट तो इतना उन्नत नहीं है कि वह मद्रास पहुंच जाय, सिख जाट भले ही पहुंच जायें। इस लिये मैं तो मानोगैमी को ठीक समझता हूं। लेकिन हमारा समाज इतनी उन्नति नहीं कर पाया है या इतनी तनज्जुली नहीं कर पाया है कि हम मान जाय कि यह सगोत्र विवाह ठीक है। इस को आप दस साल के लिये अपनी किताब में जमा रखें। दस साल के बाद उस पर फिर ग़ौर कर लिया जायगा। अगर ठीक होगा तो मान लेंगे और अगर उस वक़्त तक समाज की उतनी तरक्की नहीं हुई तो वह क़ायदा किताब में ही रहेगा। जिसे हम फोर्स्ड बाइगैमी (Forced bigamy) कहते हैं उसे हम अच्छी चीज़ नहीं मानते हैं लेकिन उस का रिवाज समाज में चालू है और हमारे यहां उस की बहुत ज्यादा तादाद नहीं है। इस के लिये आप हम को दस साल का वक़्त दे दीजिये।

अन्त में मैं फिर दोबारा डाक्टर साहब से यह निवेदन करना चाहता हूं कि मैं डाक्टर साहब की सब बातों का पूरे तौर पर हामी हूं, लेकिन मैं फिर भी उन से यह प्रार्थना करता हूं कि वह या तो भट्ट जी के संशोधन को मान लें या भार्गव जी के ४२० नम्बर के संशोधन को मंजूर कर लें।

(English translation of the above speech)

Ch. Ranbir Singh (Punjab): I have risen to support amendments No. 420 proposed by Pandit Thakur Das Bhargava and No. 288 of Shri Bhatt. Shri Bhatt by his amendment means that if some customs or usages clash with the Hindu Code Bill, then that clash should not be regarded in the light that the custom is abolished, but it should be allowed to continue for ten years and after that period it should be regarded as finished. Amendment No. 420 by Pandit Thakur Das Bhargava means that those customs which are in accordance with the Hindu Code Bill should be regarded as abolished; and those customs which are left, their power or their legality should be retained. Whatever has been said by my learned friend Shri Pande I agree to that and this thing is right and very much heartening. The real purpose of the Hindu Code Bill was considered to be that this Bill was being brought forward to introduce some reforms in the country to remove the prevailing social evils from the society and to bring about some changes in it. How many people would be affected by it has to be taken into consideration and as he said I regard the imposition of this Hindu Code Bill from the backdoor upon those people of this country who

were free from it uptil now, as an act of abuse of power.

Shri A. C. Shukla: Even if they do not want it they must have it.

Ch. Ranbir Singh: Shri Shukla has not understood the meaning of the word imposition used by me, or he has not heard it properly. If he says that the imposition which I have said is wrong then perhaps I would like to know from him whether he can quote any example in which any person from the Punjab, may he be a Hindu or a Sikh or a Muslim, has ever raised his voice that their customary law should be abolished and in place of that they should have the law of Manu, or of Yajnavalkya or of anybody else.

Shri A. C. Shukla: When they will become educated they would demand that.

Ch. Ranbir Singh: Parhaps Shri Shukla does not know how dynamic personalities have borne in our Punjab who have challenged the authorities of our country. Although, I do not support them but this is an historical fact that during the recent years nobody had been able to defeat a Congress candidate in the Hindu majority areas, but in the Punjab there was a constituency in Hariyana, which is a Hindu majority area, in which Ch. Chottu Ram had defeated a Congress candidate.

Dr. Ambedkar: Ch. Chottu Ram was a great friend of Hindus.

Ch. Ranbir Singh: In case the hon. Dr. Ambedkar has got any document or any other proof about it, I am ready to accept that. But as far as his objective is concerned I am not opposed to that. I am a supporter of monogamy and I want that in some special circumstances arrangement for divorce should also be made so that when some difficulty is felt on both sides, by the man as well as by the woman in living together, a way must be found out to save them from that difficulty. But along with it I cannot help saying that this attempt is nothing but an act of abuse of power, because we should have applied this Hindu Code Bill to those only who wanted to be governed by it.

Since this question of Hindu Code Bill has come before this House, it has taken several months and many a day has been spent upon it, I tried hard to snatch some minutes so that I might express my views about it, but unfortunately I could not get a chance. Unfortunately, when Sardar Man spoke about it, instead of coming to the right thing he got himself entangled in the labyrinth of the Sikh religion, perhaps he might have thought that in this way his point would be more forceful or there might have been some other reason. However, I think that this question is not related to Sikhism alone, this is a question pertaining to the customary laws of the whole of the Punjab. I want to bring to the notice of the hon. Dr. Ambedkar that even in such a time when such Brahmanic rules and regulations with regard to the living and customs of the country and the society were being enforced rigidly, *viz.*, one could not go in a particular direction on Mondays or on Tuesdays or on Saturdays, the martial race of the Jats in the Punjab, to which I and the hon. Sardar Baldev Singh belong, did not yield to the Brahmanic rules and it has not done so even now. I want to submit that really in our society there is no likelihood of any appreciable opposition to the two provisions relating to monogamy and divorce, and I am not personally against them, but I am opposed to the method and manner which you are resorting to. And the manner or the backdoor method through which it has developed is not a proper one. This is not because I regard myself a non-Hindu but I do feel that we have never been governed by the Hindu Code and it has never been enforced with regard to us. I doubt your intentions that you can govern by the backdoor policy those whom you could not enslave mentally. I disagree with you to a great extent with regard to the rules and regulations which you are enacting in respect of marriage and divorce without caring for the prevailing customs. I want to state with respect to this that many reformers of society have done a great many reforms in the Hindu Society with regard to the widow's plight but I want to point out that a young widow has remained an unknown thing to our society from times immemorial. Our society does not know the name of a young widow. Because it is a custom in our community that when the husband of a woman dies, then after a year of his death the brothers and parents of the widow and the relations of her late husband meet together and in spite of the shyness, as is common everywhere in our Hindu society, and against her formal wish, that she would herself bear the distress that has befallen her, and in spite of her refusal she is told that this is not possible. It may be said that her ideal is good, but how many people are there who can follow such a high ideal? The people of our society doubt whether such a lofty ideal which you are going to establish in our society would not create any evil in our society. Therefore, you should recognise our simple custom of remarriage and not invalidate it. So

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I wanted to support the proposition laid down by Shri Bhatt. Now I mention the reasons for that.

On the one hand where your rules and regulations wanted to reduce the troubles of our womenfolk, and they have reduced them to a great extent, on the other hand their troubles have been increased manifold. And that is because you have given them a sort of right to marry wherever they want. In the ordinary way, if no extraordinary trouble arises it would easily become a custom that they could remarry, but why do you lay down this restriction? Generally people are not bigamous of their own will but they are forced by circumstances. If a brother dies, his brother has to concede to the custom of bigamy against his wishes.

Shrimati Dixit: I want to ask you a question. There is a woman, who has got four or six children, there is her husband's brother's wife, she also has got four or six children. If they are made to live together would not the co-wifely feeling create trouble between them? Is it not unjustifiable on principle to force a woman to marry another man against her wishes?

Sardar Hukam Singh (Punjab): By the will of God.

Ch. Ranbir Singh: If you mean remarriage by that, I would say no; remarriage is possible only when it is regularly sanctioned by society, but there are many women who cannot express their desire. After thirteen or fourteen days of his wife's death a man may express it, but the women cannot do so due to the peculiar set-up of our society such a thing is impossible, and ample time is required to change that. But if she meant this that if there is a brother, who has got two or three children and a wife and he has a brother who is about to die, and he also has got two or three children and his wife, that if they are made to live together it would create difficulties and trouble would arise, if she wants to know about that, I am coming to that point also. I confess it and everybody in our society would confess it that nobody resorts to bigamy willingly and that the woman is also helpless, because she loves her children and she cannot leave the two or three orphans, for where could they find shelter. She cannot say that she wants to remarry and the other members of the household also cannot leave the children, then the question arises whether she should take her children with her. But this is a custom in our society and I think, you may enact any law but you cannot change it. This is not a matter of joke. They themselves could change it but you cannot change it today.

There is another custom in our society. It is their belief that even the most foolish man belonging to a particular family would not allow his children to go to another family. And if a man tries to do so a very severe punishment has been prescribed for him in our community. Even if you say that our community is backward and it is very difficult to improve it, the result of such an action among us is still murder. If you want that the number of murders and assassinations should increase in our society,—the Punjab is already notorious for murders and assassinations, for many people are hanged there for such murders etc.—if you want to increase their number you are at liberty to impose any rules and regulations on them immediately. But if you want to decrease the number of murders and assassinations and the sentences of death, I would request you to accept the amendment of Shri Bhatt or of Shri Bhargava.

So I was saying that either a woman, if she loves her children, will be forced to live as a widow for the rest of her life, as has never been done in her community before, or, if she does not love her children, she might take them stealthily to some other place at night and if she meets some daring person who says that he would see how others could harm him the result would be that either she would become a widow again or her husband would be hanged. But, in any case, she would not remain a fortunate wife. Though this is a big and a terrifying thing, but it is a fact.

Then there is the question of *sagotra* marriage. How many men and women live in the cities? I want to state my own reactions about this Hindu Code Bill. In this house the majority of members come from the urban areas. Those who were born and brought up in the cities confine their thoughts to the rules and regulations and manners and customs of the cities. They think there is a vast difference between townlife and village life, they have got no experience about it. I give a simple example. For instance, take the case of a city. If a woman there does not want to marry nobody would object. But if in a village a girl attains about the sixteen of age not only does distress befall her parents but that girl is persecuted too. Everybody comes to the father and says, "why do you not arrange for the marriage of your girl?" The girl

might be bitterly opposed to marriage but she cannot avoid marriage. She is forced to do so; this theory might be good or bad but this is a fact. From this very example you can differentiate between the mode of life in a town and that of a village and see how much difference is there between them; and still you want to enact a common law for the both. My friend Shri Jangde spoke so forcefully. He spoke for others but I suspect Shri Jangde has become a townsman or has gone to their side. He is coming to appreciate the urban way of life. He wants to tell his own tale and not that of the people of his own place. So I was submitting that when there is so much difference between the two modes of life, there is such a vast difference between their social conditions, and you want to enact a law which will be applicable to all irrespective of their customs and usages, it would be a great injustice to them.

There is another point I would like to touch upon in this connection and that is with regard to *sagotra* marriage. Unlike the customs obtaining among us in Punjab, here we find that most of the girls are usually married locally. Taking the case of Delhi itself, it will be seen that girls from one part of the city are married in the other part of the city. Even in the small towns having a population of say ten thousand they are married likewise. Under the circumstances. they are not conversant with the customs regarding marriage prevailing among us. In keeping with the custom obtaining among us, I cannot get my son married among my own subcaste which is spread over as many as 24 villages situate within a radius of no less than ten miles. It is not that he cannot be married in only those 24 villages, even the villages numbering about 30 to 40 where the families of his mother's subcaste are settled are ruled out for the purpose of such matrimony. Things do not end here. I cannot get my son married to a girl from any of the thirty to forty villages, where people of my mother's subcaste live. That is to say, I cannot find a bride for my son from amongst a hundred neighbouring villages or so.

Shri A. C. Shukla: Is it a healthy practice or otherwise?

Ch. Ranbir Singh: I never laid any claim to this effect. It is none of my intention to annoy him in the way the hon. Doctor did. Unlike him I cannot dare utter anything unpleasant things. In contrast with the big personality of the hon. Dr. Ambedkar I am but an humble Member.

Shri Radhelal Vyas (Madhya Bharat): But you are also Jat.

Ch. Ranbir Singh: Of course, I am, but not a Sikh Jat like Sardar Bhopinder Singh Man. I do not want to enter into any controversy—and thereby cause offence to anyone—as to whether our custom is better or others' or whether or not this measure is of any use. What I want is simply to apprise you of our customs which, for instance, prevent me from getting my son married in about as many as one hundred to one hundred twenty villages. How under such a state of affairs, can those women residing in small towns or even in big cities, be supposed to have any real estimate of the extent of hardships and difficulties which we are subjected to while facing such issues, because for them marriage is no more than a mere routine affair that could be performed from one *mohalla* to the other?

Pandit Thakur Das Bhargava: There is no difference between Hindu Law and your law in so far as this matter is concerned.

Ch. Ranbir Singh: There may not be any difference in the laws but the developments do vary. According to our customs we cannot establish matrimonial connections among some certain *gotras*. None can dare go against such a custom. Even the most backward person—under the present social structure such a man is bound to be treated as such, although in future he may be called progressive —cannot possibly take such a step. In fact none has got so much courage. so to say. But what you are doing today is, if I may say so, simply enabling such a man, by law, to take such a step.

Shri A. C. Shukla: What is it that the hon. Member wants?

Ch. Ranbir Singh: I am not going to say what I want. I would, on the other hand, only want to apprise the House of the various customs prevailing. That is why I am pleading for Shri Bhatt's amendment to be accepted. Let developments be closely watched during the next ten years. The truth will express itself in the right manner. If our course of action would be correct you would, I am sure, change over to our side or, otherwise, we would do the same thing.

So I was referring to the fact that even in the present days *sagotra* marriages are not being performed. But there is no denying the fact that rules and regulations have great force on their back. Supposing a man

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with the help of this law seeks to get married in the same village or among the same *gotra*, what would be the possible consequences? He is likely to meet the same fate as I have described earlier. It is not that I want to exaggerate things in any way, but, all the same, let me point out what I consider to be a serious drawback in our present day society. Supposing any member of my family gets married in such a manner, nobody would care to ascertain my views in the matter. If my brother commits any wrong of this type, it may be that I may also be murdered simply because I happen to be his brother, regardless of the fact whether my views are in his favour or otherwise. None is going to ask me to explain my viewpoint. Such is the sorry state of affairs in our community. Indeed how strange it looks that they judge the doings of one brother from those of the other! Here, in your society, three brothers can hold three different views—one can be a Communist, the second a Socialist and the third a Congressite. To be more precise, if a man here is a member of the Bharatiya Jan Sangh, it is open to his brother to join any other party. But things at our end are quite the reverse. If any one member of a certain family there joins Congress, the entire family would be automatically deemed to be Congressite regardless of the fact whether it be so or not. Such is the condition of our community. Now it is for you to call it whatever you like—progress or otherwise. I, for one, under such circumstances, stand for monogamy in our society. In a country like ours, especially in a community which I belong to, namely Jats, monogamy is particularly essential, for among us the number of boys is more than girls. A man can have two wives only by encroaching upon the share of any one of his fellow beings. Under the practice of monogamy, comparatively larger number of men would be provided with wives which is otherwise not possible. It is just possible there may be such regions in this country where the number of women is more than men.

Sardar B. S. Man (Punjab): In madras they have.

Ch. Ranbir Singh: But the difficulty is that a Hindu Jat of our side is not so broad-minded as to go as far as Madras: a Sikh Jat may go. I for one consider monogamy to be a step in the right direction; but the difficulty is that our society has not yet so advanced, or shall I say, degenerated, so as to agree to the practice of *sagotra* marriage. Let it be postponed for ten years, after that this issue may be taken afresh for consideration. If by that time the society succeeds in reaching that height of advancement, which would clear the field for such steps, we would accept it; otherwise it would keep on pending. We do not, of course, approve of the practice of what we call forced bigamy, but, all the same, the practice continues in our society, though it is not so common. Give us ten years' time during which we may make efforts to do away with such a practice.

In the end, once again I take this opportunity to submit to the hon. Dr. Ambedkar that although, I am a wholehearted supporter of this measure, I would like him to accept either Shri Bhatt's amendment or amendment No. 420 moved by Shri Bhargava.

Shri Sivan Pillay (Travancore-Cochin): Sir, let the question be now put.

Captain A. P. Singh (Vindhya Pradesh): No, Sir. At least those who have moved amendments may be given an opportunity to speak.

Sardar B. S. Man: Yes, Sir. This is a very important point.

Mr. Deputy-Speaker: I shall call Mr. Jhunjhunwala and after him Shri Bhatt. They have tabled amendments.

Shri Syamnandan Sahaya: Sir, I have also tabled amendments.

Mr. Deputy-Speaker: I shall call them in this order, and then I shall consider any other name.

12 NOON.

श्री झुनझुनवाला : उपवाचस्पति जी, जो मेरे तीन संशोधन हैं ये कांस्टीट्यूशन (Constitution) पर निर्धारित हैं। मेरा पहिला संशोधन यह है कि जब यह कोड पास कर दिया जाय और इस बिल में कोई ऐसी चीज़ हो कि जो किसी धर्म के विरुद्ध हो तो इस बिल की कोई भी धारा वर्तमान कानूनी धारा को ओभरराइड (override) नहीं करेगी। दूसरे में यह है कि यह कोड पास कर दिया जाय और इस कोड में कोई ऐसी चीज़ हो जो मारैलिटी के विरुद्ध हो तो वह धारा वर्तमान कानून और रिवाज को रद नहीं करेगी। मेरा तीसरा संशोधन यह

है कि यह कोड यदि पास कर दिया जाय और इस कोड में यदि कोई ऐसी चीज़ हो जो कि किसी के कल्चर (culture) के विरुद्ध हो तो वह वर्तमान कानून को रद्द नहीं करेगी ।

उपवाचस्पति जी, जब मैं ने यह तीसरा संशोधन पेश किया था उस समय आप ने कहा था कि यह कल्चर शब्द जो है सो कैसे डिफ़ाइन (define) होगा और इस का क्या रूप होगा । इस सम्बन्ध में मैं ने कल ग़लती से कह दिया था कि कांस्टीट्यूशन में १२९ धारा है, उस में यह अधिकार दिया गया है कि हर एक सैक्शन को यह अधिकार होगा कि वह अपनी संस्कृति को बचा कर रखे । परन्तु वह ग़लत चीज़ थी । यह चीज़ आर्टिकल २९ में है, वह इस तरह है

"29. (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same."

अतएव मैं ने यहां पर जो शब्द रखा है वह कल्चर व्यवहार किया है । इस लिये यदि कोई भी चीज़ इस हिन्दू कोड में ऐसी हुई जिस की वजह से कि कोई भी सैक्शन किसी भी कम्युनिटी के किसी भी धर्म या कल्चर के प्रिज़र्व (preserve) करने में बाधा देती है तो वह इस कोड में नहीं आ सकती है । ऐसा कांस्टीट्यूशन का कहना है । अब मेरे जो संशोधन हैं, इन संशोधनों के बारे में मैं पीछे कहूंगा । इस का कारण यह है कि आप की यह रूलिंग (ruling) है कि यदि कोई अपने संशोधन पर बोलना चाहता है और उस को और किसी दूसरे संशोधन पर या क्लाज पर बोलना हो तो वह उसी समय बोल ले, पीछे उस को बोलने का अधिकार नहीं रहेगा । इसलिये पहले मैं जो क्लाज़ है उस पर बोलना चाहता हूं । उस क्लाज़ पर बोलने के बाद में अपने संशोधनों पर बोलूंगा और इस तरह मुझे अपने संशोधनों पर बाद में बोलने से कुछ सुभीता भी होगा ।

उपवाचस्पति जी, जब यह हिन्दू कोड रखा गया था, और अब इस का नाम मैरिज एंड डाइवोर्स अमेंडमेंट एक्ट (Marriage and Divorce Amendment Act) रख कर के पास किये जाने का इरादा है, तो उस में दो बातें बताई जाती हैं । दो बातों की दुहाई दी जाती है, कि उन दो बातों की वजह से हम यह हिन्दू कोड या मैरिज और डाइवोर्स अमेंडमेंट ऐक्ट लेना चाहते हैं । वे दो बातें क्या हैं ? एक चीज़ तो यह है कि यह चीज़ प्रोग्रेसिव (progressive) है । दूसरी बात क्या है ? वह यह है कि हमारी बहिनों को जो अधिकार अभी तक नहीं था वह अधिकार इस में दिया जाता है। अभी तक पुरुष लोग बहिनों के ऊपर अत्याचार करते आये हैं, उन अत्याचारों को दूर करने के लिये यह कोड बनाया जा रहा है । अब मैं यह देखना चाहता हूं कि यह कोड प्रोग्रैसिव है या नहीं । प्रोग्रेसिव शब्द का अर्थ हमारे ला मिनिस्टर साहब ने कुछ भी नहीं बतलाया है कि कौन सी चीज़ प्रौग्रेसिव है । उन्हों ने हिन्दू धर्म के ऊपर कहते हुए जब इस ओर से यह कहा गया कि हिन्दू धर्म बहुत ही पुराना धर्म है और यह हिन्दू धर्म विज्ञान पर निर्भर करता है, सच्चे विज्ञान पर निर्भर करता है, और इसी लिये यद्यपि इस धर्म के ऊपर कई तरह के अत्याचार हुए परन्तु सब अत्याचारों को सहते हुए भी आज यह हिन्दू धर्म क़ायम है, इस को चाहे हिन्दू धर्म कहिये, चाहे सच्चा धर्म कहिये यह धर्म क़ायम है, तो इस का जवाब देते हुए हमारे ला मेम्बर

[श्री झुनझुनवाला]

साहब ने कहा कि बुद्ध देव ने आ कर सच्चा रूप बताया है कि धर्म का क्या रूप होना चाहिये। वह जो हमारे बुद्ध देव हैं वह इस बात को नहीं सह सके कि हमारी महिलाओं पर अत्याचार हो रहा है और उन को कुछ अधिकार नहीं है। पुरुषों को अधिक अधिकार दे दिये गये हैं और वे हमारी बहिनों पर अत्याचार कर रहे हैं। यह इस प्रकार का भेद देख कर हमारे बुद्ध देव जी को बड़ी चोट लगी और इस लिये उन्होंने कहा कि सबों को समानता मिलनी चाहिये और किसी में भी कुछ भेद नहीं होना चाहिये। इस बात को कहने का मेरा अभिप्राय यह है कि श्री बुद्ध देव जी की बात के ऊपर आप यह कोड लाये हैं और वह भी एक बड़े व्यक्ति और बड़े धार्मिक व्यक्ति थे। इस लिये, उपवाचस्पति जी, बुद्ध देव क्या चाहते थे और क्या करना चाहते थे और उन का मुख्य उद्देश्य क्या था, यह बात उन को देखनी चाहिये। इस समय हम को एक महाराष्ट्र साधू ज्ञानेश्वरी महाराज की बात याद आ गई। उन्हों ने एक दोहा कहा है जो अभी हम को याद नहीं है उसकी एक आरव्यायिका है कि एक तालाब में जिस में कमल लगे थे, दो जन्तु घुसे, एक मेंढक और दूसरी मधुमक्खी। मधुमक्खी ने तो कमल पर बैठ कर उस का शहद चूसा और अपने साथ बाहर खुश्बू की चीज और मधु लाई, लेकिन मेंढक जो उस तालाब में घुसा, वह अपने संग बाहर कीचड़ और गन्दगी लाया।

[SARDAR HUKUM SINGH *in the Chair*]

मुझे तरस आता है यह देख कर कि जहां बुद्ध देव ने यह बात सिखाई है कि जितनी भी हमारी डिज़ायर (desire) हों, अभिलाषायें हों, अर्थात् जो हमारी पाशविक डिज़ायर्स हों, उन को जितना हम जीत सकें और रोक सकें वह अच्छा है ताकि हम मनुष्य मात्र की और समाज की सेवा कर सकें। यह खास चीज बुद्ध देव की टीचिंग्स (teachings) में थी, परन्तु यह बड़े दुख और आश्चर्य की बात है कि हमारे ला मेम्बर साहब को वह चीज उस में नहीं मिली। उन को क्या चीज मिली, पुरुषों को बहुविवाह करने का अधिकार है, इस को रोकने के लिये हमारी महिलाओं को डाइवोर्स का अधिकार नहीं है, इस लिये उन को डाइवोर्स का अधिकार देना चाहिये ताकि उन में समानता हो। अब सदस्यगण और अध्यक्ष जी, इस के ऊपर आप लोग ज़रा ग़ौर कीजिये कि यह जो समानता दिलाने का प्रयत्न किया जा रहा है, यह किस प्रकार की समानता है।

Dr. Ambedkar: Is this all relevant on clause 4? Let us have some regard for relevancy. We could not altogether abandon the rule of relevancy.

Pandit M. B. Bhargava: Relevancy is not the sole monopoly of the Law Minister?

Mr. Chairman: I would request hon. Members to leave this question to me. The hon. Minister has asked me to decide it.

Pandit M. B. Bhargava: But he himself pronounced the judgment—he did not refer it to you.

Dr. Ambedkar: Relevancy ought to be also your monopoly—not only mine.

Pandit M. B. Bhargava: It is yours...

Mr. Chairman: There should not be any cross-questions and answers. I would again request hon. Members to have greater restraint on themselves. I would ask the hon. Member who is speaking that he should be more relevant in his speech.

श्री झुनझुनवाला: I was quite relevant in pointing out as to where the equality exists and where it is that we should give equal right to the women. हमारे माननीय मित्र पंडित ठाकुर दास भार्गव जी ने जो फरमाया था कि.....

Mr. Chairman: I must tell him that that is not the real issue just at the moment, that is whether equality should exist or not. He may refer to custom and other things, but equality is not the direct issue at this moment. We should have regard to that.

श्री झुनझुनवाला : मैं सभापति जी, आप को बताना चाहता हूं कि इस चीज का डाइरेक्ट इश्यू (direct issue) क्या है। मैं ने आरम्भ में कहा है कि हमारे ला मेम्बर साहब ने इस ला को पेश करते हुए दो दुहाइयां दी हैं पहली दुहाई तो उन्हों ने यह दी है कि जो चीज उन्हों ने पेश की है वह प्रौग्रेसिव है। दूसरी दुहाई उन्होंने यह दी है कि हमारी महिलाओं को समान अधिकार प्राप्त नहीं हैं और उन्हीं दुहाइयों में यह चार क्लाज कहता है कि जितनी भी चीज उस में लिखी गई है, वह ही केवल कायम रहेगी, और सब को ओवर-राइड कर देगी। मैं यहां पर यह दिखलाने की चेष्टा करूंगा और जैसा कि मैं ने संशोधन में भी कहा है, मैं पहिले इस क्लाज पर बोलूंगा और यदि यह जो कानून बनाया गया है उन दोनों दुहाइयों का समर्थन नहीं करता है और यदि यह दो दुहाइयां ठीक नहीं पाई जाती हैं, तो मेरी समझ में यह कानून ही खराब है, अतएव इस अमेंडमेंट पर वह चीज इसलिये लागू होती है कि यह अमेंडमेंट ही नहीं रहना चाहिये। इसलिये मैं मेम्बरों को यह समझा रहा हूं कि यह चीज जो रखी गई है एक दम गलत है और यथार्थ में वह दोनों दुहाइयां इस से पूरी नहीं होती हैं। इस को आना ही नहीं चाहिये। इसी बात को मैं आप लोगों को अपनी तुच्छ बुद्धि के अनुसार समझाने की चेष्टा कर रहा था और यदि आप की आज्ञा हो तो मैं इस सम्बन्ध में कुछ थोड़ा और निवेदन करूं। कारण यदि यह चीज साफ़ नहीं की जाती है, तब तो फिर इस में कोई चीज ही नहीं रह जाती है। मैं आप को बताना चाहता हूं और यह दिखलाना चाहता हूं कि यह जो कानून बन कर हमारे सामने आयी है, वह न तो प्रौग्रेसिव है, और न ही वह हमारी बहिनों को सच्चा और वास्तविक अधिकार ही देता है, जैसा कि इस को पेश करते वक्त दुहाई दी गई है। यदि इस समय प्रापर्टी (property) क्लाज लिया जाता, वह चीज यदि इस समय पेश की जाती, तो मैं कहता कि हां, ठीक है चूंकि हमारी बहिनों को प्रापर्टी के सम्बन्ध में समान अधिकार प्राप्त नहीं हैं, वे बड़ी विपत्ति में हैं, उन के ऊपर अत्याचार हो रहा है। मेरी बहन दुर्गा बाई अभी यहां पर नहीं हैं। उन्होंने हम को बहुत दर्द भरी बातें जो मद्रास की तरफ औरतों के प्रति होती हैं सुनाईं और उन बातों को सुन कर हमें बड़ा अफसोस हुआ और जब प्रापर्टी क्लाज आयगा, तब उस के ऊपर बोला जायगा। यदि हमारे ला मेम्बर सचमुच में बहिनों का भला चाहते थे, और यदि इस सम्बन्ध में कुछ करना चाहते थे, तो उन को पहिले प्रापर्टी क्लाज लेना चाहिये था क्योंकि जब तक हमारी बहिनें आर्थिक क्षेत्र में स्वाधीन नहीं होंगी और उन की आर्थिक दशा नहीं सुधरेगी, तब तक औरतों को जो स्थान हम समाज में दिलाना चाहते हैं, वह प्राप्त नहीं कर सकतीं। मेरी समझ में नहीं आता कि फिर उस को पहले क्यों नहीं रखा गया है, मैं उन की नियत की कोई आलोचना नहीं करना चाहता, परन्तु यह कहे बिना नहीं रह सकता कि वास्तव में उन का यह अभिप्राय नहीं है जिस की वे दुहाई दे रहे हैं। उन का तो यह अभिप्राय था कि कोई न कोई ऐसा कानून लागू कर दें जिस से कि इस हिन्दू धर्म का हिन्दू समाज का और हिन्दू रीति रिवाजों

[श्री झुनझुनवाला]

और कस्टम्स (customs) सब का नाश हो जाय और इस हिन्दू समाज का नैतिक पतन हो जाय— उन का केवल अभिप्राय यही है और कुछ नहीं। अगर प्रापर्टी क्लाज़ लिया जाता और यह देखने का प्रयत्न किया जाता कि किस तरह अपनी बहिनों की आर्थिक अवस्था में सुधार किया जाय, तो वास्तविक लाभ हम कुछ उन का कर सकते थे अगर प्रापर्टी क्लाज़ को पहले लिया जाता। बड़े बड़े लोगों ने इस बात के लिये कहा, परन्तु हमारे ला मेम्बर साहब का सिर हिलता ही रहा और वह इस पर राज़ी नहीं हुए। वह कभी भी नहीं चाहते हैं कि इस पार्लियामेंट में कम से कम हम लोगों को यह श्रेय मिले कि हम लोगों ने अपनी बहिनों को एक ऐसी चीज़ दी जिस से कि उन की तकलीफ दूर हुई।

सभापति जी, जैसा कि मैं अभी कह रहा था कि मेरे मित्र भार्गव जी ने कहा कि डाइवोर्स ऐसी चीज़ नहीं है जिसे मैं पसन्द करता हूं। और भी जितने लोग हैं उन में से बहुत कम लोग हैं जिन्होंने इस का समर्थन किया है। इस का कारण यह है कि यह अच्छी चीज़ नहीं है। जिस दिन डाइवोर्स लागू हो जायगा, उस का नतीजा क्या होगा। रोज़ सुबह अखबार में हमारे युवक और युवती पढ़ेंगे, हमारे बृजकिशोर जी के गांव में बिहार में जो अखबार निकलेगा, हमारे श्यामनन्दन सहाय जी का जो पेपर अखबार निकलने वाला है वह रोज़ यह रिपोर्ट करेगा कि आज इतने डाइवोर्स हुए। फ़लाने फ़लाने में डाइवोर्स हुआ, वह रोज़ पढ़ेंगे। सब से पहले बृजकिशोर जी ने डाइवोर्स को बड़ी भारी चीज़ समझी है। वह उत्साह से ये पेपर पढ़ेंगे। मुझे अफ़सोस हो रहा है कि वह यहां पर नहीं है जिस से कि वह समझते कि वह कैसी पागलपन की बात कर रहे थे।

सभापति जी, मैं आप से यह कह रहा था कि हमारे ठाकुर दास जी ने कहा कि डाइवोर्स अच्छी चीज़ नहीं है, परन्तु हम डाइवोर्स क्यों रखना चाहते हैं। इसलिये कि डाइवोर्स के क्लाज़ में हम उन लोगों को यह हक़ देने जा रहे हैं, यह आप्शनल (optional) है। यह बहुत बड़ी चीज़ हो गई है। यह एनेबलिंग कलाज (enabling clause) है। हम एनेबलिंग क्लाज रखना चाहते हैं। मैं कहना चाहता हूं कि बहुत से एनेबलिंग क्लाज पास किये गये हैं यहां पर। उद्योग मंत्री भी करते हैं। वाणिज्य मन्त्री भी करते हैं। यह तो एनेबलिंग क्लाज है। इसी तरह से कोका कोला के लिए कहते हैं कि अगर बनता है तो बनने दो, यह तो एनेबलिंग क्लाज है। इसी तरह से डाइवोर्स का एनेबलिंग क्लाज है। मैं ठाकुर दास जी से पूछूंगा कि किसी घर में दो लड़के हैं। एक लड़के ने तीन विवाह किये, दूसरे लड़के ने अपने पिता से कहा कि भाई ने तीन विवाह किये हैं, और यह इतना खर्च करते है, हम आखिर क्या करें ?

डा० अम्बेडकर: वह चार कर ले।

श्री झुनझुनवाला: तो पिता ने कहा कि तू पांच कर ले। तो हमारे ठाकुर दास जी की थ्योरी से यह करना चाहिये कि एक बेटे ने तीन शादियां की तो दूसरा पांच करे, वह कम क्यों रहे। वह यह अधिकार देना चाहते हैं। ठाकुर दास जी की थ्योरी यह है। लेकिन हमारे श्यामनन्दन सहाय जी हैं, वह तो बड़े भारी बनिया हैं, वह क्या कहेंगे ? वह कहेंगे कि नहीं उस ने अगर तीन शादियां कर ली हैं तो उस को आज ही से घर से निकाल दो।

सभापति महोदय: मैं माननीय सदस्य से यह निवेदन करूंगा कि शादियां कितनी हों यह उस वक्त आयेगा जिस समय मोनोगेमी का सवाल आयेगा ।अभी तो कस्टमस (Customs), रूल्स (Rules) का ही सवाल है, इस के सम्बन्ध में जो कुछ आप कहना चाहते हैं, बेहतर है उसी के ऊपर आप रहें ।

पंडित ठाकुर दास भार्गव: उन की मुराद यह है कि वह तीन स्त्रियों का डाइवोर्स करेगा, दूसरा पांच का करेगा ।

श्री झुनझुनवाला: सभापति जी, मैं आप की आज्ञा का पालन करूंगा और ज़रूर उसी के मुताबिक़ कहूंगा, परन्तु जैसा कि मैं ने शुरू में आप से निवेदन किया....

सभापति महोदय: आप इस क्लाज़ पर बेशक बोलिये ।

श्री झुनझुनवाला: मैं मैरेज क्लाज पर बोल रहा था ।

सभापति महोदय: मैरेज क्लाज पर नहीं, क्लाज ४ ज़ेर बहस है ।

Sardar B. S. Man: On a point of information. While discussing the present clause and while moving certain amendments to the effect that from its effect certain customs may be excluded, we have to place our case by showing that those customs should be excluded for valid reasons. In that case, I suppose we are entitled to refer to the customs that are at variance with the Hindu Code and thus base our case that customs which have a long history, which have been recognised as such and which are not repugnant to public policy and thus which have the force of law should be permitted. In that respect, I beg to say that it is perfectly within the rights of Members to refer to the customs even in detail.

Mr. Chairman: It has already been laid down that as far as particular customs are concerned, they might be taken up when the particular clauses are under discussion. So far as the relevancy about this general clause is concerned, you can discuss in a general way and say that such and such a custom is very old and it has been uniformly observed. You can say that much about the status of a custom, but if we were to take up all the customs and discuss them there will be no end to it. There are the relevant clauses and when they are taken up each particular custom can be discussed. That would be the better place. I do not bar this discussion. I am only requesting the hon. Member and suggesting to him that that would be the more proper place. Here, he can discuss in a general way.

श्री झुनझुनवाला: मैं उसी तरह से बोलूंगा । परन्तु यह जो चीज़ है जिस तरह से क्लाज २ पर बोलने का मौक़ा मुझे नहीं मिला और स्पीकर साहब की रूलिंग यह थी कि क्लाज २ पर जो बात है उसी तरह पर क्लाज ४ पर भी प्रायः सारी चीज़ को आप डिस्कस (discuss) कर सकते हैं । परन्तु केवल प्रापर्टी के क्लाज को नहीं डिस्कस कर सकते । डाइवोर्स और मैरेज की जो चीज है उस से क्या लाभ है, क्या हानि है उस को मैं आप के सामने रख रहा हूं । मैं समझता हूं मैं ने एक शब्द भी इस के बाहर का नहीं कहा । परन्तु मैं उसी तरह बोल रहा हूं जिस तरह से आप ने कहा है । अब जितना हो सकेगा उतना कम समय ले कर मैं इस बात को कहूंगा ।

अब मैं अपने संशोधन पर आऊंगा ।

बाबू रामनारायण सिंह: बहुत सुन्दर है ।

डा० अम्बेडकर: अब बैठ जाओ ।

श्री झुनझुनवाला: हां बैठ जाऊंगा, आप कृपा करके इस कोड को हटा लें और हिन्दुओं को इस से मुक्त कर दीजिये ।

डा० अम्बेडकर: अब बैठ जाओ ।

श्री झुनझुनवाला: आप चले जाइये, मैं भी बैठ जाऊंगा ।

डा० अम्बेडकर: अब बैठ जाओ, नहीं तो मैं चला जाऊंगा ?

श्री झुनझुनवाला: आप चले जाओ, तो मैं बैठ जाऊंगा ।

सभापति महोदय: मैं कहना चाहता हूं कि माननीय सदस्य अपने भाषण को वह शुरू करें ।

श्री झुनझुनवाला: मैं तो अपने भाषण पर आ रहा हूं, परन्तु ला मेम्बर साहब जो इतने रिस्पान्सिबल (Responsible) आदमी हैं वह अनावश्यक बातें कर रहे हैं । वह चाहते हैं कि किसी भी तरह से यह चीज़ टाक ओवर (Talk over) हो जाय । वह चाहते हैं कि किसी तरह से सरकार का पैसा खर्च हो, ये जानते हैं महिलाओं के कोई समान अधिकार की बात नहीं है सरकार का कुछ पैसा खर्च हो तो लोग यह तो जानेंगे कि ला मेम्बर कुछ कर रहे हैं ।

Mr. Chairman: May I request the hon. Member that he should proceed with his speech instead of answering these questions.

श्री झुनझुनवाला: मैं अदब के साथ आप की बात को मानता हूं । जब स्पीच के बीच में कोई रोकता है तो फिर दिक़त हो जाती है, जब लोग इन्टरप्ट (interrupt) करते हैं तो समय अधिक लग जाता है ।

डा० अम्बेडकर: यह तो आप के साथी हैं, घबराना नहीं ।

श्री झुनझुनवाला: साथी भी कभी छोड़ देते हैं । आप के ऐसे साथी मुझे बहुत मिले । जैसे आप महिलाओं के साथी बन रहे थे और उन्हें छोड़ दिया । सभापति जी, मैं तो अपना भाषण कर रहा हूं पर आनरेबिल मिनिस्टर बीच में बोलते हैं ।

Sardar B. S. Man: Will it not be discourteous to the hon. Law Minister to ignore the interruption and not to reply to it?

श्री झुनझुनवाला: दूसरी बात मैं यह कहना चाहता हूं कि जैसा कि क़िस्सा आप को पण्डित ठाकुर दास भार्गव ने बतलाया कि यदि इस प्रकार की चीज़ आये कि जिस से नुक़सान होता हो और कोई ख़राब काम कर रहा हो तो हम दूसरे से भी यह कह दें कि तू भी ऐसा ही कर । हम महिलाओं से कहें कि यदि पुरुष कोई अन्याय कर रहे हैं तो तुम भी यह अन्याय करो । यह कहां की बात है । यही चीज़ मैं आप को दिखला रहा हूं ।

दूसरी बात अब यह देखनी है कि यह चीज़ प्रोग्रेसिव है या नहीं । हमारे पूजनीय होम मिनिस्टर साहब, राजा जी, इस वक्त यहां नहीं हैं । उन्होंने प्रेस बिल (Press Bill) को सिलेक्ट कमेटी में रेफ़र (refer) करते समय एक बात कही थी । उन्होंने कहा था कि मेरे बारे में कोई एक लेख या कैरीकेचर (Caricature) (हम को याद नहीं है कि उन्होंने लेख कहा या कैरीकेचर) निकला था । उस को जो उन्होंने देखा तो वह उनको बहुत रिवोल्टिंग (revolting) मालूम हुआ और यह लगा कि यह तो बहुत ही अश्लील चीज़ है । और ऐसा क्यों किया गया उन को यह चीज़ बड़ी बुरी लगी । परन्तु उन्होंने कहा कि जब मैं आज कल के अख़बारों को देखता हूं तो वह तो कोई असलियत की बात ही नहीं थी जिस को कि मैं ने बुरा समझा । (कुछ आवाजें) । मेरे मित्र मुझ को इंटरप्ट करने की कोशिश कर रहे हैं ।

Mr. Chairman: If you address the Chair perhaps you will not feel that inconvenience.

श्री झुनझुनवाला : मैं इधर उधर देख कर बोलने का आदी हूं। तो उन्होंने कहा कि उस की कोई असलियत ही नहीं मालूम हुई । आजकल जो बातें और कैरीकेचर क़ाग़ज़ों में निकलते हैं उन के सामने तो वह चीज़ कोई अश्लील नहीं लगती । तो उन्होंने कहा कि मुझे बिना काम ही बुरा लग रहा था । जिन चीज़ों को हम नहीं देखना चाहते उन को अखबार हमारे बीच में लाते हैं और हमारे युवक और युवतियां उन को देखते हैं और उन के ऊपर क्या प्रभाव पड़ता होगा, भगवान् ही जाने । अब मैं उन से उस समय यह पूछना चाहता था कि जो चीज़ें आजकल अखबारों आदि में निकलती हैं क्या यह प्रोग्रेसिव हैं ? जिस को आप अश्लील समझते थे यह उस से ज्यादा अश्लील हैं तो क्या यह चीज़ प्रोग्रेसिव हैं और अगर प्रोग्रेसिव हैं तो क्या इन का हमारे लिए अच्छा परिणाम होता है । अस्तु मैं यह दिखलाना चाहता था कि हमारे विधि मन्त्री जी जो कि कलियुग के मनु हैं.....

श्री श्यामनन्दन सहाय : कलियुग के मनु नहीं कलियुगी मनु ।

श्री झुनझुनवाला : हमारा युग कलियुग है इसलिए मैं ने उन को कलियुग का मनु कहा । हमारे जो गाडगिल साहब हैं और जो अपने को भ्रष्ट ब्राहमण मानते हैं और अपने को पण्डित समझते हैं उन्होंने यह टाइटिल दिया है । तो मैं तो यही कहना चाहता था कि वह इस युग के मनु हैं । मैं यह जानना चाहता था कि इस प्रोग्रेसिव का मतलब हमारे समाज को ऊंचा ले जाना है या नीचा ले जाना है । अगर मेरे अमेंडमेंट पेश करने से पहले वह बतला देते कि जो जो चीजें उन्होंने अपने इस बिल में रखी हैं वह इस तरह से प्रोग्रेसिव हैं तो मेरी समझ में आ जाता उन्होंने तो केवल यह कह दिया कि प्रोग्रेसिव हैं और महिलाओं को समान अधिकार देने चाहियें । जिस चीज़ में उन्हें समान अधिकार की आवश्यकता थी जिस से कि उन का लाभ होता उसे देने से तो वह नट गये और अधिकार देते हैं डाइवोर्स करने का । तो जो चीज़ भी रखी गई है मैं आप को यह बतलाना चाहता हूं कि क्या सचमुच वह प्रोग्रेसिव है । वह कभी भी प्रोग्रेसिव नहीं हो सकती । यदि दूसरा कोई बुरा काम करता है और इसलिए मैं भी बुरा काम करूं तो यह तो कोई अच्छी बात नहीं है । करना तो यह चाहिये कि जो बुरा काम करता है उस के लिए ऐसा क़ानून लाना चाहिये कि उस को बुरा काम करने से रोका जा सके । न कि जो दूसरा है उस को भी कह दें कि वह जो करता है तू भी वैसा ही काम कर ।

सभापति जी, यह बातें मुझे इस क्लाज के बारे में कहनी थीं । अब मैं आप के सामने अपने संशोधन पेश करूंगा और उन संशोधनों पर अपने विचार सूक्ष्मता के साथ प्रकट करूंगा । मैं इसे पहले पढ़ कर सुना चुका हूं इसलिए अब नहीं पढ़ूंगा । इस में वक़्त लगेगा ।

श्री श्यामनन्दन सहाय : हम लोग समझेंगे कैसे और कैसे उस पर वोट देंगे ।

सभापति महोदय : पहले आप ने पढ़ दिया है ।

श्री झुनझुनवाला : जी हां, पढ़ दिया है ।

सभापति महोदय : तो अब दोबारा पढ़ने की आवश्यकता नहीं है ।

श्री श्यामनन्दन सहाय : हमें उस पर वोट देना है । आप पढ़ कर जरूर सुनाइये ।

श्री झुनझुनवाला: पहला मेरा अमेंडमेंट यह है कि कोई भी चीज़ इस कोड में ऐसी हो जो कि हिन्दू धर्म के, सिख धर्म के, जैन धर्म के, बुद्ध धर्म के और मर्मकतायम और अलियसंथानम जिस किसी के भी यदि यह विरुद्ध हो तो ऐसी हालत में यह उन पर लागू नहीं होगा ।

डाक्टर आम्बेडकर: खाली मारवाड़ियों पर लागू होगा ।

श्री झुनझुनवाला: अगर मारवाड़ियों पर लागू नहीं होता तो भी मैं नहीं बैठता, यह चीज़ समाज और देश के लिए घातक है ।

सभापति महोदय: आप आगे चलिये ।

श्री झुनझुनवाला: मिनिस्टर साहब हम को रोकते हैं और हर प्रकार का आक्षेप करते हैं । हमारे कांस्टीट्यूशन में बराबरी का अधिकार दिया गया है । आप हमें उन का जवाब देने का अधिकार क्यों नहीं देते ?

सभापति महोदय : उन से भी मैं कह रहा हूं कि वह दखल न दें । आप बोलिये ।

श्री झुनझुनवाला: आप उन की तरफ़ मुंह कर के कहिये ताकि वह भी सुनें ।

सभापति महोदय: मुझे यह आदत आप से हो गई है । मैं मिनिस्टर साहब से भी कहता हूं कि वह दखल न दें ।

श्री झुनझुनवाला: अब इस सम्बन्ध में मैं कांस्टीट्यूशन का आर्टिकल २५ चेयरमैन के सामने और मेम्बरों के सामने पढ़ कर सुनाना चाहता हूं । कृपा कर के आप लोग इसे ध्यान से सुनिये ।

"25. (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion."

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;"

बाबु रामनारायण सिंह: हिन्दी अनुवाद कर दीजिये ।

श्री झुनझुनवाला : आप इस के लिये एक मास्टर रख लीजिये । फिर यह है :

"(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus."

इस के बाद एकसप्लेनेशन (Explanation) है, उस की आवश्यकता नहीं है । तो मेरा सभापति महोदय से और सब सदस्यों से यह निवेदन है कि मैं ने यह संशोधन पेश किये हैं कि आप कोई भी बात में सुधार करें, तो हमारे धर्मशास्त्रों के सम्बन्ध में आप को किसी भी तरह से कोई बात करने का अधिकार नहीं है । परन्तु यदि कोई ऐसी चीज़ हो जो कि हमारे धर्मशास्त्र से कनफ्लिक्ट (Conflict) नहीं करती हो, हमारे धर्म से कनफ्लिक्ट नहीं करती हो, तो वैसी हालत में आप उस चीज़ को ला सकते हैं । तो मेरा संशोधन यह है कि जैसा कि इस में लिखा है कि :

"any text, rule, or interpretation of Hindu law, or any custom or usage or any other law in force immediately prior to the commencement of this Code shall cease to have effect as respects any of the matters dealt with in this Code."

"Any other law in force immediately before the commencement of this Code shall cease to have effect in so far as it is inconsistent with the provisions of this Code."

तो यह जो है इस में मेरा यही कहना है कि जो भी क़ानून बनाया है वह ठीक है, इस में मुझे कोई आपत्ति नहीं है । परन्तु यदि हमारे धर्म के विरुद्ध कोई ऐसी चीज़ हो तो जिस किसी भी धर्म के विरुद्ध हो, हिन्दू के, सिक्ख के, जैन के, तो उस पर वह लागू नहीं होगी ।

श्री नज़ीरुद्दीन अहमद: मुसलमान ?

श्री झुनझुनवाला: मुसलमान इस में नहीं आते । दूसरी चीज़ हमारी यह है कि धर्म की जगह मारैलिटी (morality) है । कोई भी ऐसी चीज़ यदि आप अपने क़ानून में लगायें जिस से कि जनता की मारैलिटी पर, उन की नैतिकता पर, असर पड़े, उन का नैतिक पतन हो, तो वैसी बात आप नहीं रख सकते । सभापति जी, यही चीज़ मैं कहना चाहता हूं, यह हमारा अमेंडमेंट इस में लगा दिया जाय और कांस्टीट्यूशन में सब लोगों को अधिकार दिया गया है । यदि हमारा यह अमेंडमेंट मंजूर नहीं किया गया तो मैं समझूंगा कि हमारी जो गवर्नमेंट है वह धर्म के ऊपर आक्षेप कर रही है । यह उन को नहीं करना चाहिये ।

मेरी तीसरी अमेंडमेंट जो है वह आर्टिकल २९ पर है । उस में कल्चर (Culture) के सम्बन्ध में कहा गया है, अर्थात् :

"29. (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same."

तो हमारा जो कल्चर है, हिन्दुओं का, सिक्खों का, जैनियों का जो कल्चर है उस कल्चर पर या हिन्दुओं में भी किसी सैक्शन का, चाहे समूचे हिन्दुओं का कल्चर न हो, किसी भी सैक्शन के कल्चर पर वह लागू हो और उन के कल्चर से यदि यह कनफ्लिक्ट करे तो वैसी हालत में भी यह लागू नहीं होगा ।

[MR. DEPUTY-SPEAKER *in the Chair*]

अतएव इन तीनों संशोधनों को मैं उपवाचस्पति द्वारा मेम्बरों के सामने रखते हुए सविनय यह निवेदन करूंगा कि आप लोग मेरे इन संशोधनों को स्वीकार कर के ही इस सैक्शन को पास करें । पहले तो मैं यही कहूंगा कि आप इस सैक्शन को पास ही नहीं करें, किन्तु यदि आप पास करें तो मेरे इन संशोधनों के साथ पास करें । इसलिए मैं हाउस का ज्यादा समय अब नहीं लेना चाहता ।

(English translation of the above speech)

Shri Jhunjhunwala (Bihar): All my three amendments are in consonance with the Constitution. My first amendment provides that if this Code contains anything against any religion, no clause of this Bill shall override the provisions of the existing law; the second amendment provides that if this Code contains anything against morality, the Bill shall not override the provisions of any existing law, or any custom or usage in force; and the third provides that if this Code contains anything against the culture of any section of the people, the Bill shall not override the existing law.

Sir, when I had moved the third amendment, you had asked as to what would be the form and definition of the word 'culture'. Yesterday, in this connection, I had wrongly quoted Article 129 of the Constitution as empowering every section of people to have a culture of its own and to conserve the same. In fact it is Article 29 and not Article 129—which reads:

"29. (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same."

That is why I have put in the word 'culture' here. The Hindu Code, in keeping with the Constitution, cannot contain anything whatsoever that would deprive any section of people, or any community of its right to preserve its own religion or culture. I shall deal with my amendments later on. It will be recalled here that you had given a ruling to the effect that one should take the opportunity to deal with any other amendment or clause while

[Shri Jhunjhunwala]

speaking on his own amendment, or otherwise he would not be allowed to do so afterwards. It is because of this that I propose to take this clause first and the amendments later on. Moreover, that would be more convenient to me.

Sir, when the Hindu Code Bill, which is now sought to be passed under another title, namely 'Marriage and Divorce Bill', was placed before the House, it was said to have contained two main things. It is argued in this behalf that this Hindu Code Bill, or say, Marriage and Divorce Amendment Bill, is sought to be passed in view of the two main objectives which it aims at. In the first place, the measure is stated to be progressive; and secondly, it is described as a legislation that would go a long way to provide women with their due rights hitherto denied to them. Men have so far been very unjust to women and it is with a view to eradicating this evil that this legislation is sought to be enacted. Now, let us see whether or not this measure is progressive. The hon. Minister of Law did not give any definition of the word 'progressive' that might distinguish between things which are progressive and those which are not. It was stated from this side that the Hindu religion was one of a very long standing and was based on true scientific principles which alone are responsible for its survival so far despite so many atrocities committed on it. Replying to this suggestion the hon. Law Minister was pleased to state that it was Lord Buddha who had disclosed the true path of the religion. The Buddha, Dr. Ambedkar said, could not tolerate to see women being subjected to men's continuous oppression and having no rights whatsoever. It made Buddha's heart bleed to see men having more rights than women and committing all sorts of atrocities on them. It was this treatment of discrimination against one sex, the hon. Law Minister went on to say, that led Lord Buddha to preach equality among men and women. By quoting the hon. Doctor here I simply want to impress that the Bill in question is stated to have been brought forward in accordance with the Buddha's teachings. Lord Buddha, a great figure as he was, was undoubtedly religious-minded. Let us, therefore, closely study as to what was the real object which he aimed at. Here I am reminded Sir, of a couplet of Sant Jnaneshwar, a renowned Maharashtriyan poet, the actual words of which I do not quite recollect at the moment but it means something like this: A frog accompanied by a bee entered a tank where there were lotus flowers blooming on the water. The bee sat on the lotus and sucked its honey; it carried away with it honey and fine smell. But the frog which had accompanied the bee to the tank could only bring some mud and durt.

[SARDAR HUKAM SINGH *in the Chair*]

Sir, the Buddha preached that the more we are able to subdue our evil desires, the better it is, for it would only help us to serve the society and then humanity as a whole in a better way. This was the highlight of his teachings. But, Sir, it is something extremely astonishing and painful too, that our Law Minister could not find any such suggestion in his teachings. What he could make out was that since men had had right of polygamy, women too must have the right to divorce in order that the effects of the former could be neutralised. I would request you Sir, as also the hon. Members here, just to see what type of equality is sought to be given by this Bill.

Dr. Ambedkar: Is this all relevant on clause 4? Let us have some regard for relevancy. We could not altogether abandon the rule of relevancy.

Pandit M. B. Bhargava: Relevancy is not the sole monopoly of the Law Minister.

Mr. Chairman: I would request hon. Members to leave this question to me. The hon. Minister has asked me to decide it.

Pandit M. B. Bhargava: But he himself pronounced the judgement—he did not refer it to you.

Dr. Ambedkar: Relevancy ought to be also your monopoly—not only mine.

Pandit M. B. Bhargava: It is yours...

Mr. Chairman: There should not be any cross-questions and answers. I would again request hon. Members to have greater restraint on themselves. I would ask the hon. Member who is speaking that he should be more relevant in his speech.

Shri Jhunjhunwala: I was quite relevant in pointing out on to where the equality exists and where it is that we should give equal right to the women.

My friend Shri Thakur Das Bhargava observed.....

Mr. Chairman: I must tell him that that is not the real issue just at the moment, that is whether equality

should exist or not. He may refer to customs and other things, but equality is not the direct issue at this moment. We should have regard to that.

Shri Jhunjhunwala: May I explain to you Sir, as to how these things relate to the real issue. I had in the beginning submitted that the hon. Minister of Law had advocated two main points in support of this measure. Firstly, he described this Bill as a progressive measure, and secondly, he stated that this Bill sought to put women, who had not got equal rights, on equal footing with men. And now this clause 4 provides that the provisions of the Bill shall override all other things. As I said before, I shall first deal with this clause. In my opinion the measure itself is of no use when it does not go to fulfil either of the two things that are advocated in its support. Hence I am just trying to convince the Law Minister that the measure he has put before the House is absurd altogether and does not conform with the two main points which he has advocated. As a matter of fact, the measure ought not to have come at all. That is the point which I wanted the House to take note of. I may, with your permission Sir, make a few more observations in this connection and they would clear the whole thing, for otherwise the argument itself would become meaningless. I would, therefore, like you to appreciate the fact that this measure is neither progressive nor does it seek to provide women with their due rights as was advocated when the Bill was brought forward. If the clause relating to property had been taken, I could understand it because so far as property is concerned, our women have not got equal rights, they are suffering great hardships on this account and are subjected to innumerable atrocities. I am sorry Shrimati Durgabai is not here at the moment; she was kind enough to narrate some heart-rending tales with regard to women in Madras thereby causing much pain to all of us here. The question will be dealt with at length while taking up the property clause. If in reality the Law Minister was very serious about our women's betterment, he should have taken up property clause first, because we cannot possibly help women take their proper place in society unless their economic condition is well improved and they are made absolutely free in that sphere. Hence I cannot understand why that clause is not taken first. It is none of my intention to criticise his motives, but, all the same, I cannot but say that his real object is apparently different from what he is advocating. By bringing forward this measure he seems to be intending to exterminate the Hindu religion, Hindu society and the Hindu customs and usage, thereby bringing moral degradation of the Hindu society. His aim seems to be no other than this. By taking the property clause first and thereby seeing that women's economic conditions are improved, we could have given them some solid relief. Many an hon. Member pleaded for this but there was our Law Minister constantly nodding his head in disapproval. He perhaps does not like us to take the credit of doing something for our women which would help them and redress their grievances.

I was just referring to my friend Shri Bhargava's view that divorce was a thing which he did not like and as a matter of fact very few persons have supported it. The reason is that it is not a good thing. I may just give you an idea as to what would happen if divorce is enforced. Daily the youths of our country would read in the papers that so many cases of divorce took place that day and that such and such person divorced his or her partner. The newspaper published in my friend Shri Brij Kishore's village in Bihar and also that which Shri Syamnandan Sahaya is going to bring out, would report such cases and they would read them. Out of all persons, Shri Brij Kishore seems to have seen greatest advantages in divorce. He would read these reports very enthusiastically. I am rather sorry that he is not here at this time otherwise he could know what madness he was indulging in while talking like that.

Sir, I was submitting what my friend Pandit Thakur Das Bhargava said that divorce was not a good thing. But he stated the reasons why he favoured the idea. He said that in the clause relating to divorce a provision was being made to make it optional. According to him it was a very important provision. He said that it was only an enabling clause. But I would submit that a number of enabling clauses have been passed here. The hon. Minister of Industry and the hon. Minister of Commerce have often taken refuge under this 'enabling clause'. They have said the same thing about Coca-Cola. They say if it is being manufactured, let it be; it is only an enabling clause. Similarly there is this enabling clause related to divorce. I would like to ask one thing from Pandit Thakur Das Bhargava. Suppose there are two sons of a father and one of them has married three wives. Now the other fellow goes and tells his father that if his brother could marry three and spend so much, then what should he do.

Dr. Ambedkar: He may marry four.

Shri Jhunjhunwala: The father replied that he could marry five. So, according to Pandit Thakur Das's theory, if a son marries three wives, the other should marry five. Why after all he should lag behind? This is the right he wants to give. But our friend Shri Syamnandan Sahaya is a staunch *baniya*. What would he say? He would say that if he has married three wives, he should immediately be turned out.

Mr. Chairman: I would request the hon. Member to discuss the subject of marriages when the question of monogamy is taken up. We are now discussing customs and rules and it would be better if he confines himself on matters relating to this subject only.

Pandit Thakur Das Bhargava: He means to suggest that one son would divorce three wives and the other five.

Shri Jhunjhunwala: Sir, I would abide by your ruling and strictly follow it, but as I submitted in the beginning.....

Mr. Chairman: He can certainly speak on this clause.

Shri Jhunjhunwala: I was speaking on the marriage clause.

Mr. Chairman: Not on the marriage clause, clause 4 is under discussion.

Sardar B. S. Man: On a point of information. While discussing the present clause and while moving certain amendments to the effect that from its effect certain customs may be excluded, we have to place our case by showing that those customs should be excluded for valid reasons. In that case, I suppose we are entitled to refer to the customs that are at variance with the Hindu Code and thus base our case that customs which have a long history, which have been recognised as such and which are not repugnant to public policy and thus which have the force of law should be permitted. In that respect, I beg to say that it is perfectly within the rights of Members to refer to the customs even in detail.

Mr. Chairman: It has already been laid down that as far as particular customs are concerned, they might be taken up when the particular clauses are under discussion. So far as the relevancy about this general clause is concerned, you can discuss in a general way and say that such and such a custom is very old and it has been uniformly observed. You can say that much about the status of a custom, but if we were to take up all the customs and discuss them there will be no end to it. There are the relevant clauses and when they are taken up each particular custom can be discussed. That would be the better place. I do not bar this discussion. I am only requesting the hon. Member and suggesting to him that that would be the more proper place. Here, he can discuss in a general way.

Shri Jhunjhunwala: Sir, I will speak according to your ruling. But I would like to submit that I could not get an opportunity to speak on clause 2, although the hon. Speaker ruled that, as in the case of clause 2, Members could speak practically on all matters while discussing clause 4. Only the clause relating to property could not be discussed. I am pointing out to the House the advantages and disadvantages of the provisions relating to divorce and marriage. I think I was never irrelevant. Anyway, I would now abide by your ruling, and briefly submit my viewpoint. I now come to my amendments.

Babu Ramnarayan Singh: Very good.

Dr. Ambedkar: Take your seat now.

Shri Jhunjhunwala: I will take my seat, you kindly withdraw this Code and relieve the Hindu Community of it.

Dr. Ambedkar: Please sit down.

Shri Jhunjhunwala: You leave and I will sit down.

Dr. Ambedkar: Take your seat, or I will go.

Shri Jhunjhunwala: You go, and I will also sit.

Mr. Chairman: I would ask the hon. Member to continue his speech.

Shri Jhunjhunwala: I am coming to my speech but the Law Minister, who is a responsible person, is indulging in unnecessary interruptions. He wants that this thing should be talked over and Government's money be spent somehow. He is not so anxious to grant equal rights to women but he is more keen to see that Government's money is spent somehow so that people outside might know that the Law Minister is not idle.

Mr. Chairman: May I request the hon. Member that he should proceed with his speech instead of answering these questions.

Shri Jhunjhunwala: Sir, I am prepared to abide by your orders. But when any hon. Member interrupts, it becomes difficult to proceed further and it also takes more time to come to the speech proper.

Dr. Ambedkar: Do not get nervous, they are your comrades.

Shri Jhunjhunwala: Comrades also desert sometimes. I have had a number of comrades like you. You have been professing yourself to be a champion of women's cause, but ultimately deserted them.

Sir, I am continuing with my speech but the hon. Minister interrupts..

Sardar B. S. Man: Will it not be discourteous to the hon. Law Minister to ignore the interruptions and not to reply to it?

Shri Jhunjhunwala: Then there is another point which I would like to submit. Pandit Thakur Das Bhargava said that if anything is suggested that might lead to some harm and if anybody is doing a wrong thing, then how far is it proper to ask others also to do the same thing? How far is it wise to ask women to do wrong to men if the latter are behaving in that manner? That is what I am going to point out.

Then we have to see whether this thing is progressive or not. Our hon. Minister of Home Affairs, Shri Rajaji is not here at present. He made some remark while referring the Press Bill to Select Committee. He said that an article or a caricature about him (I do not exactly remember what it was) appeared in some paper. When he saw it, he found it most revolting and at the same time very obscene. He did not know why it was published and felt it very much. But he said when he saw the newspapers of the present day, he felt there was nothing special in that paper which should have offended him (*Interruptions*). My hon. friends are trying to interrupt me.

Mr. Chairman: If you address the Chair perhaps you will not feel that inconvenience.

Shri Jhunjhunwala: I am accustomed to look all round while speaking.

So, he said that it was quite insignificant. As compared to the articles and caricatures that appear in the present day press, that thing did not seem to be obscene at all. He said he felt it unnecessarily. The newspapers force us to see and read those things that we do not like to see, and young men and women of the country read them. God knows what influence those things might be leaving on our youths. Now, I wanted to ask at that time whether these articles etc. that appear in our press are progressive. These are far more obscene than that which you thought to be quite vulgar. Then, are they progressive and if they are progressive do they prove beneficial for us? So, I wanted to point out that our Law Minister who is the Manu of *Kaliyug*.....

Shri Syamnandan Sahaya: Not the Manu of *Kaliyug* but *Kaliyugi* Manu.

Shri Jhunjhunwala: We are living in *Kaliyug* hence I called him the Manu of *Kaliyug*. Our hon. Minister Shri Gadgil who considers himself to be an outcast Brahmin and thinks he is a *Pandit*, has given him this title. All that I mean to say is that he is the Manu of this age. I wanted to know whether the purpose of this progressive measure is to uplift our society or to degrade and demoralize it. I could have understood the whole thing if he had convinced me before I had moved my amendments that the measure was progressive in such and such manner. He only said that it was progressive and that women should be given equal rights. He has denied those rights to them that they needed most and which could have benefited them very much. The right which he is giving to them is that of divorce. So, I was trying to point out whether this is really progressive. I say this can never be progressive. If a person does something wrong, it is not wise that I should also repeat the same thing for that reason. On the other hand, such legislation should be made whereby the person doing a wrong thing might be forbidden to do it in future. It should not be that the other person may also be asked to follow him.

That was about this clause. Now, I would move my amendments and fully express my views on them. I have already read them out and so I would not read them again. This will take more time.

Shri Syamnandan Sahaya: How would we understand and vote upon them.

Mr. Chairman: Has he already read them?

Shri Jhunjhunwala: Yes Sir, I have read them.

Mr. Chairman: Then there is no necessity of reading them again.

Shri Syamnandan Sahaya: We have to vote upon them. You must read them.

Shri Jhunjhunwala: My first amendment is that if anything in the Code is against the Hindu, Sikh, Jain or Buddhist religions or against Marumakkattayam and Aliyasanthanam laws, then it shall not apply to them.

Dr. Ambedkar: It shall apply only to the *marwaris*.

Shri Jhunjhunwala: Had it not applied to the *marwaris*, even then I would not have sat. This Code is dangerously harmful to the society and the country.

Mr. Chairman: The hon. Member should continue.

Shri Jhunjhunwala: The hon. Minister is interrupting and casting aspersions. Our Constitution provides for equal rights. Why do you not allow me to reply to his remarks?

Mr. Chairman: I am also asking him not to interrupt. The hon. Member may go on.

Shri Jhunjhunwala: You turn towards him and then say, so that he may hear.

Mr. Chairman: I have acquired this habit from the hon. Member. I would ask the hon. Minister not to interrupt.

Shri Jhunjhunwala: Now in this connection, I would like to read before the House Article 25 of the Constitution. I would request the hon. Members to listen patiently:

> "25. (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion."
>
> (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—
>
> (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;"

Babu Ramnarayan Singh: Kindly translate it into Hindi.

Shri Jhunjhunwala: You engage a teacher for that. Then there is:

> "(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus."

After that there is explanation which I need not read. So, I submit to the Chair and the hon. Members of this House that the purpose of my amendments is that when you make an effort to introduce reforms, you have no right to touch our *Dharamshastras*. But you can bring in any measure if it does not conflict with our *Shastras* and our religion. My amendment relates to the following:

> "any text, rule, or interpretation of Hindu law, or any custom or usage or any other law in force immediately prior to the commencement of this Code shall cease to have effect as respects any of the matters dealt with in this Code."
>
> "Any other law in force immediately before the commencement of this Code shall cease to have effect in so far as it is inconsistent with the provisions of this Code."

I want to submit that I have no objection to this legislation. It is alright but if there is anything which is against any religion, Hindu, Sikh or Jain, then it would not apply to it.

Shri Naziruddin Ahmad: And Muslims?

Shri Jhunjhunwala: Muslims do not come in the purview of this Bill. Then, in the next amendment, there is morality in place of religion. You cannot provide for anything in the law which has its effect on the morality of the people and which leads to their moral degeneration. This is what I have to say. This amendment should be added. We have been given this right under the Constitution. If this amendment is not accepted, I would think that our Government is slandering and vilifying our religion. They should not do it.

My third amendment is based on Article 29, wherein the following has been said about culture:

> "29. (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same."

My submission is that if this Code affects or comes in conflict with our culture or the culture of Hindus, Sikhs, Jains or the culture of any section of the Hindus, then again it shall not be applicable under those circumstances.

[MR. DEPUTY-SPEAKER *in the Chair*]

Therefore, while moving these three amendments before the House, I would urge the hon. Members to accept my amendments first and then pass the clause. In the first instance I would ask them not to pass the clause at all but if they pass it my amendments

should also be accepted along with it. I would not take any more time now and finish.

An Hon. Member: Closure, Sir.

Shri Bharati: I move that the question be now put.

Several Hon. Members: No; no.

Mr. Deputy-Speaker: The hon. Members will kindly take their seats. I will put the question to the House.

Shri Naziruddin Ahmad: Before that, Sir, I beg to state that we have submitted amendments. We have a right to speak on them. We have something to say upon them. The merits of our amendments should be discussed.

Mr. Deputy-Speaker: I agree.

Shri Syamnandan Sahaya: One more submission, Sir. You had just now announced that after Mr. Jhunjhunwala, Mr. Bhatt would speak and that after that, you would decide as to what should happen.

Mr. Deputy-Speaker: I least expected that the hon. Member Mr. Jhunjhunwala would take up so much time. His amendment is a very small one. He has taken too much time. I thought that within that time two hon. Members might speak. We have had a discussion on this particular clause since yesterday. So far as this clause is concerned, if it had stood alone, I would not have come to any conclusion. We have discussed this to a large extent on the definition clause, what custom is, what its ingredients are, and so on. Taking both of them together, I feel that there has been sufficient discussion on this. Therefore, I shall put the motion to the House. Let the House accept it or reject it.

श्री भट्ट : मेरा संशोधन भी है।

[Shri Bhatt: There is an amendment in my name also.]

Shri Syamnandan Sahaya: As Mr. Naziruddin Ahmad stated, we have tabled amendments. We wanted to speak on clause 2 also. After all, even if you pass this clause today, this matter is not finished. There are 50 or 55 clauses to be gone through. Therefore, I wish to make this submission. This is a very important clause because it is here that we lay down that the texts will not be taken into consideration. It is a matter of very primary importance. It will be another matter if we are dealing with clauses about procedural matter, clauses laying down the procedure for marriage and divorce. You may accept a closure or proceed comparatively quickly. But the question whether the texts should be abrogated, whether custom should be abrogated, that is a very vital matter. Therefore, I will again submit most respectfully this. If you are going to finish the Bill today and the Act is going to be passed, then, it is a different matter and we will submit to the closure. That is not the case and therefore we should allow time to the movers of the amendments.

Mr. Deputy-Speaker: How can you say that?

Shri Syamnandan Sahaya: We have to go through 55 clauses. So far as this clause is concerned, you should allow some more discussion. I think in this matter I have the opinion of a good number of Members on my side.

Pandit Thakur Das Bhargava: May I submit in all humility, Sir, that sometimes when amendments are moved in this House by a large number of Members and the real intention of the mover is to get a chance to speak, the situation is quite different. When, on a Bill, particular amendments are given, I beg of you kindly to see if the amendment is one of substance. Then, the person moving the amendment should be allowed to speak ordinarily.

Shri Bharati: It is left to the discretion of the Chair.

Pandit Malaviya (Uttar Pradesh): There are still many people who wish to speak on this point, and even though the House may pass the thing, I feel that in a matter of this nature, the least that we can do is to listen to them and then come to any decision. I feel therefore that we should allow people an opportunity to speak. And indeed, if there is an opportunity, I myself would like to say something about this clause. I hope, Sir, we will have the opportunity at least to have our say. The House may not agree with our view; but I feel it will be tyranny if we are not allowed an opportunity even to have our say. There might have been a good deal of discussion on any point, but that does not mean that we should not give an opportunity to those who have not been able to have their say. Therefore, I humbly request that you may kindly allow the discussion on this to go on.

Shri Bharati: Sir, it is absolutely within your discretion to decide, after taking into consideration the totality of the circumstances. We cannot.....

Shri Syamnandan Sahaya: I can only appeal to the Chair that since there are many who have yet to.....

Dr. Ambedkar: There has been sufficient debate already and (*Interruptions*) Sir, I would like to submit that in deciding whether closure should be applied or not, the issue is not whether every Member who wants to speak has spoken. The issue is whether there has been sufficient discussion or not.

Shri Syamnandan Sahaya: But every Member who ought to speak should have been allowed to speak. And, Sir, you yourself said that you would allow me to move my amendment to make this provision consistent with the clause.

Pandit Malaviya: While a Member is actually in the midst of his speech, I think, the question is even a little different from what it is when normally the question for closure is put. There is some difference.

Mr. Deputy-Speaker: But no Member is now speaking.

Pandit Malaviya: This is a matter of sufficient importance. You will find that those who want to speak have not spoken on this point at all. For instance, I have not spoken a word on this point.

Mr. Deputy-Speaker: Hon. Members must remember this point—and it has also been referred to by the hon. Law Minister—that it is not as if every Member who wants to speak on an amendment or a motion, should be given an opportunity.

Shri Naziruddin Ahmad: But those who have given amendments?

Mr. Deputy-Speaker: Then every hon. Member will submit an amendment so that he may be allowed to speak. That cannot be the criterion. The Chair can be expected to weigh the pros and cons and come to the conclusion whether there has been sufficient debate or not on a particular viewpoint. It may be that the particular hon. Member who has tabled the amendment has not pressed it; but some other hon. Member may have done it, perhaps much more eloquently and forcibly.

Shri Naziruddin Ahmad: No, Sir.

Mr. Deputy-Speaker:- It is a question to be judged by a third person, and I feel that there has been sufficient discussion over this matter.

Shri Syamnandan Sahaya: The points raised in these amendments are different. It is a quite different matter if the same type of amendments are discussed together. But there are particular aspects of these amendments which have not been pressed and those aspects must be considered. That is one submission of mine. The other submission is this. We are to decide here and now and once and for all, that texts, customs and usages will be given the go-by. Therefore, the importance of this clause is far more than that of any other that you might discuss in the whole of this Bill.

Mr. Deputy-Speaker: Now that this point has been raised, I would like to ask the hon. Law Minister whether in view of what has been said, it is possible to use the word "inconsistent" in both the parts.

Dr. Ambedkar: That is another matter. I do not propose to make the change and if you will give me a chance, I will explain why.

Pandit Malaviya: Sir, now that the Leader of the House is here, can we make an appeal to him?

Mr. Deputy-Speaker: No. I feel that there has been sufficient discussion.

The question is:

"That the question be now put."

The House divided: Ayes, 63: Noes, 34.

Division No. 3. AYES **12-54 P.M.**

Alagesan, Shri	Das, Shri B. K.	Guha, Shri G. S.
Ambedkar, Dr.	Das, Shri Ram Dhani	Hasan, Shri M. A.
Ansari, Shri	Devi Singh, Dr.	Hazarika, Shri J. N.
Baldev Singh, Sardar	Durgabai, Shrimati	Hazarika, Shri M.
Barman, Shri	Gadgil, Shri	Himatsinhji, Major-General.
Bharati, Shri	Galib, Shri	Iyyunni, Shri
Borooah, Shri	Gandhi, Shri Feroz	Jagjivan Ram, Shri
Brajeshwar Prasad, Shri	Ghose, Shri S. M.	Jain, Shri A. P.
Chaudhuri, Shrimati Kaimala.	Ghule, Shri	Jajoo, Shri
	Gopalaswami, Shri	

Jangde, Shri
Jayashri, Shrimati
Kanaka Sabai, Shri
Keskar, Dr.
Krishnamachari, Shri T. T.
Kunzru, Pandit
Lakshmanan, Shri
Mahata, Shri Kshudiram
Mallayya, Shri
Menon. Shri Damodara
Menon. Shri Karunakara
Mirza, Shri
Moidu, Moulavi
Nehru, Shri Jawaharlal
Obaidullah, Shri
Pant, Shri D. D.
Pillay, Shri Sivan
Poonacha, Shri
Pustake, Shri
Raj Bahadur, Shri
Samanta, Shri S. C.
Sanjivayya, Shri
Santhanam, Shri
Saprawnga, Shri
Satish Chandra, Shri
Sharma, Pandit Krishna Chandra.
Shiv Charan Lal, Shri
Shukla, Shri S. N.
Sidhva, Shri
Subbiah, Shri
Subramaniam, Dr. V.
Swaminadhan, Shrimati Ammu.
Vaishya, Shri M. B.
Velayudhan, Shri R.
Venkataraman, Shri

NOES

Achint Ram, Lala
Bhargava, Pandit M. B.
Bhargava, Pandit Thakur Das.
Bhatt, Shri
Chandrika Ram, Shri
Das, Shri Nandkishore
Das, Shri Sarangdhar
Das, Shri S. N.
Dholakia, Shri
Gupta, Shri V. J.
Hukam Singh, Sardar
Indra Vidyavachaspati Shri.
Jhunjhunwala, Shri
Maitra, Pandit
Malaviya, Pandit
Man, Sardar B. S.
Naik, Shri M.
Naziruddin Ahmad, Shri
Oraon, Shri
Pannalal Bansilal, Shri
Ramnarayan Singh, Babu
Ranbir Singh, Ch.
Raut, Shri
Sahaya, Shri Syamnandan
Shah, Prof. K. T.
Sharma, Pandit Balkrishna.
Shukla, Shri A. C.
Singh, Capt. A. P.
Singh, Shri T. N.
Snatak, Shri N.
Sondhi, Shri
Tek Chand, Dr.
Vaidya, Shri V. B.
Yashwant Rai, Prof.

The motion was adopted.

Dr. Ambedkar: I have already explained, when I intervened earlier, as to what exactly is the position of custom under clause 4 which is the subject matter of discussion. At that time I explained that so far as clause 4 is concerned, it does not say that no custom shall be recognised. My amendment to clause 4 is "Save as otherwise expressly provided in this Code", which means that if Parliament agrees to save any particular custom from the operation of any particular clause it is still open to Parliament to do so. Therefore, it is quite wrong on the part of Members of Parliament who have dilated on the question of custom to suggest that this clause is so worded as not to leave any room or place for custom. All that has been said that this Code is trying to abrogate custom altogether is to my mind based upon a complete misunderstanding. As I have already said, it is still open to Members of Parliament who are interested in a particular custom to raise that question under the appropriate clause of this Bill when it will be open to discussion and I shall be able to express my opinion whether I am in a position to accept that custom or I am not in a position to accept that custom. Therefore, that position is perfectly safeguarded even if clause 4 is passed in the form in which I have suggested it should be passed.

The only other point to which I wish to make reference is the point made by my friend coming from one of the tribes, Mr. Theble Oraon. It seems to me that he has not read the provisions of clause 2 which this House has already passed. Sub-clause (2) of clause 2 says to what persons it shall not apply. To that there is a proviso. My submission is that in the case of persons who belong to certain tribes which are not altogether Hinduised completely—so that with regard to them we could say that the Hindu Law as such applies to them in the same way as it applies to those who are in fact and in law, *de jure* and *de facto*, Hindus—it is only those parts of the Hindu Law which they have adopted that will be regarded as applicable to them and not the whole of the Code. Consequently there need be no fear in the minds of members of those communities which are still in a tribal condition and which follow different ways and different modes and different laws with regard to their marriage and divorce. They are still safeguarded except that if it is prov-

[Dr. Ambedkar]

ed that they have adopted any particular part of the Hindu Law, it is only to that extent that they will be governed by this Code and not otherwise. My submission is that we have taken every precaution by adding the proviso to sub-clause (2) not to impose the whole of the Hindu Law which will be enacted in Part II upon them. They have still the freedom to go their way except to the extent which has been provided in this proviso.

One other point to which I would like to make a passing reference is the point made by my friend Dr. Pande and my friend Mr. T. N. Singh. They have said, I believe in almost unequivocal terms, that customs which exist today must be safeguarded and nothing should be done to abrogate them. My friend, Dr. Pande, I believe, is a young graduate; I do not wish to say a raw but a young graduate from the University who probably has yet to study what the institution of Parliament means.....

An Hon. Member: He is a professor and a secretary.

Dr. Ambedkar: I am very sorry, but he is still ignorant on certain aspects. People talk about customs in the country. Well, why have customs grown? Why do the *Smritikaras* allow custom to continue? I think the answer to that question is to be found in the fact that so far as this country is concerned, there never was such a thing as a Parliament representing the people, coming here and legislating about their social relationship; there never has been such a thing at all. (*Interruption*). I do not know whether we are better or not. The reason, and the principal reason, why custom has been allowed to govern the life of the people in this country and in a manner much more rigorous than is to be found in any other part of the world...

Shri Syamnandan Sahaya: If I am not mistaken the common law in England still prevails although there has been a Parliament for ages.

Dr. Ambedkar: I know that he is much more informed on certain subjects than I am.

Shri Syamnandan Sahaya: Dr. Ambedkar, I have never accepted that you are omniscient and that you have all the knowledge. It may be that in certain matters I may have better information.....

Dr. Ambedkar: I agree that you are. My point is that in view of the fact.....

श्री भट्ट : डाक्टर साहब मैं यह याद दिलाना चाहता हूं कि परिषद् शब्द कहां से आया, और राज्य परिषद् किस रीति से चल रहा है।

डा० अम्बेडकर : वह परिषद् तो और बात है।

श्री भट्ट : वह परिषद् का ही स्वरूप था।

[**Shri Bhatt:** I would like to remind the hon. Dr. as to wherefrom we got the word *parishad* and how the word *Rajya-parishad* has come into being.

Dr. Ambedkar: That *Parishad* is another thing.

Shri Bhatt: That was nothing but a form of *Parishad*.]

Dr. Ambedkar: *Parishad* is only a Council; it is not a Parliament. It has never been. What other way was left open to the people to regulate their life except to make their own custom, because there was no Parliament, there was no Legislature and nothing of the kind? But when we have got a Parliament, the function of which is to make law, the question that we have to consider and very seriously consider is whether we are going to allow the people as such who are outside the Parliament to have a parallel authority to make their customary laws and the Parliament should have no right to interfere in them. I think, that is a very serious question that we have to consider. It is quite one thing to say that where customs have grown and they are valid customs, in the way in which a valid custom has been defined in clause 2 of this Bill, they should be retained. That is a very different question. But to say that nowhere custom should be altered, amended, changed is really to abrogate the authority of Parliament and I am very doubtful that any such proposition would be accepted by Parliament and that is a matter about which I have considerable doubt and I also go further and say whether Parliament could continue to be that necessary and useful instrument for changing the ways of life for which it has been designed, if the proposition which had been supported by Messrs. Pande and T. N. Singh was accepted, that Parliament should have no jurisdiction with regard to customary laws.....

Mr. Deputy-Speaker: Will the hon. Law Minister take a long time?

Dr. Ambedkar: I am just closing.

Shri Naziruddin Ahmad: All our points have not been dealt by the hon. Minister. What becomes of those amendments which we have moved? Would they be expunged.....

Shri T. N. Singh: On a point of personal explanation, The hon. Law Minister says that I urged that each and every one of the customs should be scrupulously observed. I think that he did not probably understand my Hindi...

Dr. Ambedkar: It is quite possible.

Shri T. N. Singh: What I said was that all customs should not be lightly abrogated by a law. What I want.....

Dr. Ambedkar: On that point, I am in agreement.

Shri T. N. Singh: I want to ask if the hon. Law Minister has got any detailed list of the customs prevalent in the country. In the ignorance of all the customs of the country to say that all customs shall not be applicable, is not proper. That is exactly what I said.

Dr. C. D. Pande: One thing has been said, Sir.....

Dr. Ambedkar: You can come to my room and say that.

Dr. C. D. Pande: Dr. Ambedkar has said this in Parliament and I wish it should be clarified in Parliament. I did not say that Parliament had no authority to make laws for the customary things. I appealed to Parliament not to touch their laws. That is a quite different position than what the Law Minister makes out.

Mr. Deputy-Speaker: I shall put the clause and the amendments in this order.

Shri Syamnandan Sahaya: Before you put them, Sir, I submit it is 1-15 already. As I said, this is a very vital clause where the texts, customs and usages are being abrogated. Therefore, we desire to divide on the amendments that have been moved. It will take a long time. Therefore, I submit that the actual motion may be put on another day, whatever it it.

Some Hon. Members: Yes, yes.

Some Hon. Members: No, no.

Dr. Ambedkar: It will not take more than five minutes.

Some Hon. Members: No, no.

Capt. A. P. Singh: There are so many amendments; it will take four hours (*Interruption*).

Mr. Deputy-Speaker: Order, order. What is going to be gained.....

Shri Sondhi (Punjab): There may be division, Sir.

Shri Naziruddin Ahmad: We will ask for division at every stage. We want to go by justice and not by arbitrary rules.

Mr. Deputy-Speaker: The hon. Member may be certain that justice will be rendered. But, the question is, the House had accepted the closure; the debate is over; the hon. Law Minister has replied.

Pandit Malaviya: The House would have accepted the closure if you had put it five minutes after the debate began. It is the tyranny of the majority that is being forced on us (*Interruption*).

Shrimati Durgabai (Madras): It is the tyranny of the minority over the majority: not the tyranny of the majority.

Shri Naziruddin Ahmad: Tyranny of women.

The Minister of State for Transport and Railways (Shri Santhanam): The hon. Member should withdraw his word; I think it is contempt of Parliament.

Some Hon. Members: No, no; no contempt.

Mr. Deputy-Speaker: Let us not be too sentimental over these matters. After all, Parliament has to go by language and no doubt, it must be moderate. There are in all about eleven amendments.

Shri Syamnandan Sahaya: It will take an hour at least.

Mr. Deputy-Speaker: In view of what has happened, I thought we could get through these amendments quickly.

Some Hon. Members: No, no.

The House then adjourned till Half Past Eight of the Clock on Monday, the 24th September, 1951.